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BEFORE THE PERMANENT COURT OF ARBITRATION

UNDER THE HAGUE CONVENTION OF 1899.

THE CASE OF THE PIOUS FUND OF THE CALIFORNIAS.

UNITED STATES OF AMERICA vs. REPUBLIC OF MEXICO.

REPLICATION OF THE UNITED STATES OF AMERICA TO THE ANSWER OF THE REPUBLIC OF MEXICO,

WITH EXHIBITS OF

ENGLISH TRANSLATION OF ANSWER, ORIGINAL AND TRANSLATION OF ESCRITURA DE VENTA OF CIÉNAGA DEL PASTOR, SUMMARY OF CONTENTS OF PLEITO DE RADA AND TABLE OF INDIAN POPULATIONS OF LOWER CALIFORNIA.

THE HAGUE:

SEPTEMBER 15, 1902.

proceeds of property sold, the Bishop was not the proper recipient of funds chargeable on account thereof, for a practical interpretation covering the matters reserved in the law of April, 1845, had been given to the law of October, 1842, and further congressional action was needless, and none in fact took place.

II.

Even if no perfect right had existed in the Catholic Church of Upper California to administer the Pious Fund of the Californias, or to demand the perpetual interest thereon provided for by the Mexican decrees (a proposition we deny), nevertheless, in the eye of a court of equity dealing with the subject matter upon broad principles of right, the Catholic Church, through its accredited officers, would have been the proper recipient of the interest upon the fund. And this equitable, and, as we contend legal, right also, was conclusively recognized by the Mexican Government, as has been fully discussed in the brief of the Agent and Counsel of the United States, pages 55 and 56. For further considerations relative to the question of legal right, we also refer to the argument of Messrs. Stewart and Kappler.

III.

(*A*).

For the moment, under this heading, following the answer of Mexico, attention is invited to the fact that Sr. Mariscal in his statement in the answer of the trusts upon which the Pious Fund was held only included them in so far as he esteemed them as assisting to sustain the argument he desired to make. We have not believed that the court could be enlightened or brought to a proper conclusion by this method of treatment, and in the original brief, we have fully stated the trusts, and, for the convenience of the Court, we have repeated them in a foot-note to the English copy of the answer. (See Exhibit A hereto attached.) In the American view of the matter, a proper conclusion as to the meaning of the instrument in question can only be gained by a perusal of its essential parts, and any argument predicated upon partial and imperfect quotation must be erroneous in itself, and incidentally have a tendency to mislead the court.

To the point discussed under this Paragraph subsequent reference will be made.

(*B*).

Under this heading, Sr. Mariscal renews the contentions made by him in his letter to Secretary Hay, of date November 28, 1900 (Diplomatic Correspondence, pages 27 et seq.), insisting that only the decisory part of the judgment is to be regarded as *res judicata*. It will be noted, however, that in the letter above referred to, he relied upon Laurent to sustain his contentions. That he was in error as to the effect of the legal citation he then employed, must, we think, appear fully by reference to the letter of Mssrs. Ralston and Siddons (Diplomatic Correspondence, pages 51 et seq.), wherein it is shown that the citation relied upon by Laurent for his statement was based upon a case not properly involving the principle laid down by him, while upon the very page from which the citation was taken, Laurent showed that if the matters necessary to be found to make up a judgment had been debated between the parties, the judgment of necessity in these respects had the force of *res judicata*. It will be borne in mind that before an award could have been given in the former controversy in favor of the Bishops of California, it was necessary that the Court should have found the existence of a fund, the possession of it by Mexico, her obligation to pay interest thereon to the Catholic Bishops, the yearly amount due by her on account of such obligation, and the number of years for which she was in default. Questions upon all of these matters were raised. They were made the subject of evidence and fully debated between the parties, and, as Laurent would indicate, having been so debated. the authority of the conclusions reached as *res judicata* "n'est point douteuse".

Having therefore abandoned Laurent, he now discusses Savigny, and in the translation of the answer hereto attached (page 23), he quotes him as expressing his own opinion to the effect that "the force of *res judicata* does not exist, except in the decisory part of the judgment."

In making this statement, Sr. Mariscal is manifestly in error. We hesitate to attribute to him want of care in his reading of Savigny, but the exact language of that author is as follows:

> "C'est une doctrine fort ancienne et soutenue par un grand nombre d'auteurs que l'autorité de la chose jugée appartient au jugement seul, et non à ses motifs, et cette doctrine se résume en ces termes: L'autorité de la chose jugée n'existe que pour le dispositif du jugement." (Dr. Rom., tome 6, page 357.)

It will be seen that the statement made by Savigny was not a pronouncement of his own ideas, as would be implied from the reading of the Mexican answer, but a deduction from the writings of others of their opinion.

With this statement as the foundation for his discussion, Savigny undertakes to disentangle what the denominates "the confused and erroneous ideas" entertained by the partisans of the doctrine cited for the purpose of discovering its foundation. In the course of his interesting and instructive discussion, he arrives at the logical and impregnable position that —

> "Les éléments du jugement ont l'autorité de la chose jugée." (Page 365.)

Further pursuing the subject, he groups the "motifs" into two classes; those which are objective, or which constitute the elements necessary to be found before any judgment may be given, and those which are subjective, or which influence the mind of the judge to affirm or to deny the existence of these elements (page 367). Then, stating the principle above given in other words, he declares that —

> "Les motifs objectifs (les éléments) adoptés par le juge ont l'autorité de la chose jugé; les motifs subjectifs n'ont pas l'autorité de la chose jugée."

With this distinction in mind, he finds no difficulty whatsoever in reconciling the divergencies of opinion and explaining the misunderstandings to be found among the various authors.

The conclusion of Savigny is summed up in these words, (page 376):

> "Les motifs (meaning of the word being as above explained by him) font partie intégrante du jugement, et l'autorité de la chose jugée a pour limites le contenu du jugement y compris ses motifs."

He further comments:

> "Ce principe important, conforme à la mission du juge, a été formellement reconnu par le droit romain et appliqué dans toute son extension."

Further persuing the citations made by Sr. Mariscal from Savigny, we beg to call attention to the fact that on Page 25 (Exhibit A) hereto attached of the answer of Mexico. the following language is used:

> "In the particular case (which is ours) of a demand for interests founded on a judgment which declared them due, after having heard the pleas of the defendant against the right that claimed the capital or rent, Savigny is of opinion that this right has in its favor the force of *res judicata*; but, at the same time, he observes that Buchka solves the question in the contrary sense in accordance with Roman law; that, in the same sense, the Prussian tribunals have solved it for the reason that a recognition of a right in the reasons (motifs) of a decision does not appertain in fact to the judgment, whose decisory part alone constitutes *res judicata*; and Savigny adds:

> "We have not on this point the decision of Roman law, and the texts that are usually cited are foreign to the matter. (D. R. § 294. Numbers 3 and 4, Note (r) of No. 7, and Section 299, No. 4, T. 6, pages 397, 401, 446.)"

In the above summary and citation occur two errors, to us entirely inexplicable. To understand their nature, let us cite the exact language used by Savigny, taking it from pages 458 and 459:

> "Il en est de même quand le défendeur a été condamné à payer les intérêts d'une créance ou les arrérages d'une rente après avoir contesté le droit du demandeur au capital, ou à la rente; ce droit se trouve investi de l'autorité de la chose jugée, par la condamnation. (q)
>
> "(q) Ici encore Buchka a bien résolu la question pour le droit actuel, mais pour le droit romain il la résout à tort en sens inverse. Vol. I, p. 307, 308; vol. II, p. 184, 191. J'ai déjà signalé, § 294, notes *n* et *r*, quelques décisions erronées des tribunaux prussiens sur cette question.
>
> "Nous n'avons pas sur ce point de décision du droit romain, et les textes que l'on a coutume de citer sont étrangers à la matière."

Critical comparison of the answer of Mexico with the language of Savigny, which it purports to sum up, will show that Buchka exactly agreed with Savigny as to the present law (a fact overlooked by Mr. Mariscal), and in so far as he undertook to state the Roman law otherwise, he had, in Savigny's opinion, reached a wrong conclusion (à tort); this commentary also being omitted.

There are contained in the answer of Mexico three citations from Griolet, who has been correctly quoted as stating in opposition to the opinion of Savigny that neither the subjective nor the objective reasons can share in the authority of the judgment, and that the authority of *res judicata* does not embrace the reasons (motifs). His positions, nevertheless, are not altogether clear, and it is not too much to say they are contradictory. For instance, after referring to the distinctions made by Savigny between subjective and objective "motifs," he says (pages 8 and 9):

> "Cette théorie est exacte dans sa plus grande partie, parce qu'on voit que M. de Savigny considère comme motifs objectifs de la sentence les rapports de droit en vertu desquels la condamnation est demandée, et les rapports de droit que le défendeur oppose au demandeur pour neutraliser en quelque sorte l'effet des rapports de droit qu'on invoque contre lui, et éviter ou amoindrir la condamnation."

Furthermore, in the application of the rules governing the subject, he furnishes us with references directly in point for the support of the contentions of the United States. To make clear his understanding of what is said to be his rule, and to furnish applications in point for our present consideration, we copy the following extracts:

> "1°. CONDAMNATION DU DEFENDEUR. Il est facile de reconnaître quels sont les droits sur lesquels la condamnation suppose une déclaration du juge le plus souvent affirmative, quelquefois négative. Ce sont tous les droits dont l'existence, dans le premier cas, ou l'inexistence, dans le second cas, était nécessaire pour justifier l'ordre sanctionnateur." (P. 125).

Again from page 104, we quote two paragraphs:

> "Un rapport de droit peut avoir de nombreuses conséquences et être l'objet de sanctions diverses. Bien qu'on n'ait invoqué qu'une seule de ces conséquences ou qu'on n'ait poursuivi qu'une seule de ces sanctions, la déclaration que le juge a rendue s'attache au droit lui-même, en sorte qu'elle serait opposable si on invoquait plus tard une autre conséquence du droit, ou si on poursuivait quelque autre des sanctions que ce droit peut recevoir. Cette conclusion est conforme aux décisions de la jurisprudence et des auteurs.
>
> "N'est-elle pourtant pas contraire à la théorie qui exige l'identité de l'objet de la demande?
>
> "Sans abandonner cette théorie, on reconnaît que le juge saisi de la revendication à titre héréditaire prononce sur le droit héréditaire, que le juge qui admet un enfant à la succession de son père le déclare enfant légitime (cas. 25 pluv. an 11, D. ch. j. 163), que le juge qui ne condamne qu'au paiement du quart d'une créance, des intérêts du capital, affirme, dans le premier cas, toute la créance, et, dans le second, la créance du capital (req. 20 décembre 1830. D. ch j. 112. Toulouse, 24 décembre 1840, ibid 113)."

We add from page 105:

> "Il est donc bien admis dans notre droit que la déclaration du jugement porte sur le droit contesté tout entier, et non pas seulement sur le droit contesté relativement à la condamation qui était demandée."

We add from page 131:

> "Quelquefois l'existence de plusieurs droits est nécessaire pour justifier la condamnation poursuivie par le demandeur. Quand cette condamnation est prononcée, elle implique évidemment l'existence de tous ces droits. Mais on voit non moins aisément que l'absolution peut ne pas avoir toujours le même sens. Il suffit en effet, pour qu'elle soit justifiée, qu'un seul des droits néces-

saires ait fait défaut. Ainsi une demande d'intérêts suppose qu'un capital est dû et que ce capital produit des intérêts qui sont encore dus."

We add in a note some references to recent Netherland decisions and authorities sustaining our propositions. (*)

(*) In support of the contentions made by us upon this point, we may cite Deurwaarder's Maandblad Part 16, March 3, 1900, as showing that in the case of a suit for ent the existence of the lease may be proved by reference to a former judgment in which the tenant was condemned to pay for a prior term.

Again, as appears by reference to Paleis van Justitie for the year 1901, page 92, a decision of the Leeuwarden Court of Justice of May 31, 1900, shows that there must be considered as included within the scope of a judgment the questions of law which the judge had to decide in order to arrive at the final decision.

Again in the Weekblad van het Recht of March 7, 1900, being numbered 7397, we find a decision of the Netherlands High Court of Justice, in which it was advised by the Procureur General that every decision of the judge which by reason of the contentions of the parties he might and has given with regard to their rights, is included in the subject matter of his judgment, no matter in what particular part thereof the decision might be found. The finding of the court in this case was in the line of the above contentions, holding that the subject matter of the judgment must not be understood to relate exclusively to the actual dictum at its end, but includes the decisions given by the judge with regard to the points of difference between the parties as to their rights, provided the requirements of the second clause of Article 1954 are met. (This article requires that the claim to constitute *res judicata* be based upon the same cause and made by and against the same parties in the same capacity.) In the case at bar it was held that although two suits were brought between the same parties, having relation to the same subject matter, in reality the suit prosecuted is one and the same, depending upon the same thing, non-compliance with the contract, and therefore the former judgment was received as conclusive evidence as to facts affecting such contract.

In the Observations with regard to the Articles of the Civil Code. by C. W. Opzoomer, Third Edition, pages 279 to 281 is to be found, a discussion of the subject matter under consideration. That author considers that:

> "Whatever has once passed through all the forms of a suit and is legally decided by the judge must never afterwards be subject to any doubt."

Further discussing he says:

> "From what has been here discussed, it appears that as the legal bases are actually fundamental parts of the judgment of the judge, they should be entirely independent of the place in which they appear in such judgment. Whether they are found in the so-called *dispositif*, or whether they be anywhere else, is a matter of perfect indifference. They become authority not because of the place in which they appear, but because of the inseparable connection in which they stand to the immediate decision. Those who tear the legal basis from the decision follow the abstract method of treatment, which in the nature of things regards as divided that which our reasoning power divides."

The views of Dr. Opzoomer are thoroughly endorsed and followed in Netherland Civil Law, Part Three, Edition of 1874, pages 234 et seq. Without quoting therefrom at length, the writer says:

> "His (Dr. Opzoomer's) views are in my opinion the correct ones. (P. 242) A judgment(p.256) deciding the existence or non-existence of a claim for an interest-bearing debt may be relied upon to maintain or contest a claim with relation to unpaid interest, and for or against a claim for adjustment of a debt one may appeal to a judgment in which a decision has been given with regard to a claim for interest based on the existence or non-existence of the debt."

We have heretofore referred to the elements entering into the judgment for which we claim the authority of *res judicata*. To deny to these elements, so bound up in the amount for which judgment was finally awarded, the force of *res judicata*, and to accept the position taken by the Mexican Government, would be to take the position that it is right to regard the quotient as *res judicata*, but we may not analyse that quotient into its two elements of multiplier and multiplicand and treat the judgment as determining the amount of the multiplicand.

We might cheerfully admit that in the subjective sense, so well pointed out by Savigny, the "motifs" are not to be regarded as entering into the thing adjudged, and, applying this doctrine, say simply that the reasons influencing the mind of the Mixed Commission to conclude that $43,080.79 was the multiplicand, rather than some other sum, and to conclude further that the Roman Catholic Bishops of California were the proper plaintiffs and had a right to demand the sum above indicated yearly, should be rejected as not entering into *res judicata,* leaving us simply to claim for the substantial elements of the judgment.

If we are not right in this contention, and the beneficiary, the number of instalments for which judgment has been rendered, and the yearly amount of each instalment do not form part of the decisory part of the award, and the judgment may not be inspected for the purpose of determining these various elements so as to inform us as to what yearly claims would be satisfied by payment, then might the United States hereafter declare that although a judgment had been obtained against Mexico for a gross sum such judgment could not constitute a bar to another action for one of the factors of the old judgment, such as a particular yearly instalment. Of course, such a suggestion would be regarded as absurd.

We have up to this time argumentatively assumed the possibility that the determination of the amount due per year and the number of years for which the Mixed Commission made their calculations might be classed among the "motifs" of the award. In point of fact, we submit that these elements are exactly embraced within its decisory part; the "motifs" being merely the reasoning conducive to the result. Referring to the award itself (Transcript, page 609), we read as follows:

> "The annual amount of interest, therefore, which should fall to the share of the Roman Catholic Church of Upper California is $43080.79, and the aggregate sum for 21 years will be $904,700.79."

This is the finding of the umpire, and after some further remarks, he adds:

> "The umpire consequently awards that there be paid by the Mexican Government on account of the above mentioned claim the sum of nine hundred and four thousand, seven hundred Mexican gold dollars and seventy-nine cents ($904,700.79), with interest."

The two clauses constitute at least part of the decisory portion or *dispositif* of the award, and so treating them, the award as *res judicata* upon the question of annual payments is free from even the doubt sought to be raised by Mexico on the supposed authority of Laurent, as first suggested by Sr. Mariscal and afterwards abandoned, and lastly upon the authority of Griolet, above analysed and showed to be lacking in so far as it was used by the Minister of Foreign Affairs to sustain his position.

Sr. Mariscal further continuing his discussion of the subject of *res judicata* refers to a letter from the American Secretary of State to the Spanish Minister, Sr. Muruaga, to the effect that the findings of international commissions —

> "Are not to be regarded * * * as authoritative, except in the particular case decided. * * * *. They do not in any way bind the Government of the United States, except in those cases in which they were rendered."

In a foot note to the Appendix of this replication, we have added at the appropriate place the full paragraph contained in the letter of Mr. Bayard, Secretary of State, quoted partially and imperfectly by Sr. Mariscal.

In making the reference last indicated, Sr. Mariscal has, we respectfully submit, committed the same error pointed out on page 55 of our first brief, under the head of "The Doctrine of Overruled Cases." He has once more confused *stare decisis* with *res judicata*. In the reference now made by him, Mr. Bayard, Secretary of State, refused to recognize the authority of a decision had between certain parties with relation to a given subject matter, when it was invoked to control his action in a controversy having relation to an issue between other parties with a somewhat different subject matter. In other words, of course, he refused to recognize the doctrine, not of *res judicata*, but of *stare decisis*. No reference other than this having been cited on behalf of the Mexican Government, believed by it to show that the

doctrine of *res judicata* does not apply to arbitral tribunals, we may conclude that none exists.

We are fortunately able, in opposition to the suggestion of Sr. Mariscal that the decisions of arbitral tribunals have not the force of *res judicata*, to quote that gentleman himself, for in adressing Mr. Clayton, under date of November 28, 1900 (Diplomatic Correspondence, page 31), he writes as follows:

> "That *Res judicata pro veritate accipitur* is a principle admitted in all legislation and belonging to the Roman law, certainly no one will deny. Nor is it denied that a tribunal or judge established by international arbitration gives to its decisions '*pronounced within the limits of its jurisdiction*' (in the language of the authority cited by Mr. McCreery) the force of *res judicata*; but to give in practice the same force as that directly expressed in the decision to close the litigation, to the considerations or premises not precisely expressed as points decided by the judge, but simply referred to by him in the bases of his decision, or assumed as antecedents necessary for the party in interest who interprets the decision, is a very different thing and can not be considered in the same way."

Nowhere in the course of the present answer has Sr. Mariscal distinctly denied the jurisdiction of the Mixed Commission. Not having denied such jurisdiction, according to the citations given, its decisions have "the force of *res judicata*".

That the Mexican Commissioner (member of the Mixed Commission of 1868) believed the award would constitute *res judicata* is shown on pp. 44 and 45 of brief of Agent and Counsel of the United States, and that Mexico's former Counsel agreed to the proposition is fully developed on page 14 of the brief of the Messrs. Doyle.

It is a matter of pleasure to be able to add to this replication a reference to the Civil Law of the Netherlands, Edition of 1874, Part III, page 242, to the effect that as to *res judicata*, "Even the judgments of arbitrations are in precisely the same condition as judicial decisions."

It may not be inappropriate at this moment to congratulate the present tribunal upon the fact that the first controversy submitted to arbitration under the provisions of the Hague Convention, will enable this court, if in its judgment it be right, to declare once and for all time that to the findings of arbitral tribunals, there attaches at least the same sanctity and conclusiveness as pertains to the judgments of the least important courts, passing upon the most trifling disputes likely to aries between man and man.

If the Permanent Court of Arbitration can give no greater degree of permanence and finality to its utterances than may be inferred from the present answer of Mexico through Sr. Mariscal, then indeed may the outlook for solemn and conclusive arbitration be considered as gloomy and discouraging. The United States adhere to a view which we believe will tell in the future in favor of the peace and well-being of the world, in that it will tend, if maintained, to ensure absolutely the peaceful settlement of difficulties.

Under a further sub-heading of the present paragraph, it is contended by Sr. Mariscal that any right the claimants may have had in the beginning of the year 1848 was completely extinguished by the Treaty of Peace and Friendship which was consummated February 2 of that year between Mexico and the United States; and this for the reason that Article XIV of that Treaty declares that all debts and claims not decided up to that time, and which the citizens of the last named country should hold against the former, would be considered ended and cancelled forever.

The particular reason for the insertion of this Article is found in the fact that some years previously, and before the breaking out of the war between the two countries, there had been a commission in session for the settlement of claims between the citizens of one country and the government of the other, respectively; that many of the claims had remained legally incomplete and unsettled, and that it was the design of both governments to put an end to the old litigations. It could not have the slightest relation to the claims of those who became citizens from or at any time after the date of the treaty. The argument upon this point now being urged by Sr. Mariscal was presented by the Mexican Government in the litigation before the former Mixed Commission, and was passed upon unfavorably to the Mexican contentions, as certainly it could not have been the intention of Mexico, by a treaty had between it and the United States, to cancel claims against itself of those who up to the date of its signing had been its own citizens.

The further suggestion is made by Mexico that the claim is extinguished because, being in the nature of an annuity of one sort or another, it should be considered real property, subject to the legislation of the country in which it was held, and barred by the running of its statute of limitations.

It has never yet been held in international tribunals that a claim brought before them could be defeated by reason of the existence of a statute of this sort; such statute having no authority whatsoever over international courts. The purpose and effect of statutes of this

kind, as is well known, is not to extinguish the right, but to bar the remedy. Their operation, therefore, may be waived by the defendants, and the very agreement to submit a claim to arbitration is a waiver.

By the terms of the Protocol, it is agreed between the two countries that reference be made specifically to determine whether the claim is within the governing principle of *res judicata*, and if not "whether the same be just," and the award if against the Republic of Mexico must be for "such amount as under the contentions and evidence may be just." Even without these specific clauses, which of themselves effectually prevent any appeal to a statute of limitations and offer a consideration absolutely determinative of the plea now presented by Mexico, international tribunals are controlled in their operations by broad principles of right and justice, and this tribunal can not, of course, recognize that injustice becomes justice by the simple efflux of time without culpable laches on the part of the creditor or by the act of debtor declaring the claim barred.

After the reasons above given, we may dismiss without further discussion the references made to Sala. Dro. Real de Espagño, Tom I, Lib. 2, Tit. 14, Art. 1103, Civil Code; the decree of June 22, 1885, and Article XV of September 6, 1894, even if it were not true that the claim now under consideration, so far as it had then accrued, had been presented to Mexico before the last named law had gone into effect, and on August 17, 1891. (Diplomatic Correspondence, page 8.) Just about that time Mexico paid the last installment of the former judgment.

IV.

Messrs. Stewart and Kappler have so fully pointed out in the brief filed by them that the purpose of the Pious Fund was to maintain the Catholic Church and its missions, as well as to civilize and convert the Indians, that but little time need be spent over the point discussed by Mexico under this heading. We may, however, remark that Mexico's position is largely predicated upon the asserted control by the Mexican Governement over all the goods of the Church and the assumption that since the separation of California from Mexico she had rightfully exercised this control even though prejudicially to the California Bishops. In considering this argument, the fact is not to be lost sight of that at the time of the cession of Upper California to the United States, Mexico was under an acknowledged obligation

to pay a certain income, based upon the estimated values of the properties of the Pious Fund, to the Bishops of California for church purposes. The Bishop of Upper California very shortly after the transfer, became a corporation sole under the American Law. The obligation then existed on the part of Mexico to pay the income, at least in a proper proportion, to the Bishop of California, as that country existed in the United States, and whatever might have been the power of Mexico to use the property of the Roman Catholic Church of Mexico for its own purposes, such power could not extend to property belonging to or income payable to a religious corporation which had become the citizen of another country, whose laws did not recognize the power, either in itself or in a foreign nation, to sequester the property of the church without just compensation. In other words, even though it be granted (and we do not make this concession) that Mexico had the right to sequester the property of its own religious corporations, no right could be exercised as against such corporations or bodies, citizens of the United States. To hold otherwise would be to give extraterritorial effect to the supposed right of sequestration or confiscation.

To explain at this point the legal position occupied by the Bishop of California under the Mexican law, we refer to the argument of Sr. Aspiroz, page 395, Paragraph 126, of the Transcript, stating as follows:

> "126. The merely canonical creation of the Church of California, may have given it a standing in the Universal Church, as a religious body, but it would not have been sufficient to entitle it to recognition of the Sovereign of the country; hence the said Church was created by virtue of a decree of the Mexican Congress. This, which occurred in a nation officially Catholic, is the same as is established by the laws of the United States to entitle a corporation to be acknowledged by public law as has been repeatedly decided, in accordance with the public law of all nations."

The church, therefore, having a recognized legal existence and being possessed of certain rights under the laws of Mexico at the time of the cession of California to the United States, was, according to the principles of International Law, entitled to maintain its legal existence under the new sovereignty, as was indicated in the opinion of the Umpire. (Transcript, page 606.)

To the suggestion made on behalf of Mexico that the non-existence

of uncivilized or idolatrous Indians should entail at the same time the withdrawal of the support offered the missionaries, we have to repeat our former remark to the effect that Mexico has apparently forgotten the first and principal purpose of the foundation deed, which was to support the Catholic Church and its missions, "so that even in case of all California being civilized and converted to our holy Catholic faith, the profits of said estates shall be applied to the necessities of said missions and their support." For this reason, the remark contained on page 13 of the answer, to the effect that "it is necessary to take into account that in Upper California there exist no tribes of uncivilized Indians whose subjugation to the secular power of New Spain and conversion to the Catholic faith was the principal object or direct end of the Missions of the Jesuits, endowed with the properties of the Pious Fund of the Californias," becomes immaterial, and any evidence tending to sustain this point, incompetent and beside the purpose.

We desire, however, to be distinctly understood as denying the statement of fact last quoted in whatever form it occurs in the answer. There are, as we shall be prepared to show if material, many thousands of uncivilized Indians in Upper California, while the whole Roman Catholic Church of that territory is canonically recognized as missionary in character. Meanwhile the di appearance of the Indian population of Lower California is graphically shown by Exhibit C.

V.

It is contended in the corresponding paragraph of the answer that the Mexican Government possessed the exclusive right of investing the fund and applying its proceeds according to the intentions of the donors and that this right had been recognized on the part of the claimants. We deny both these propositions.

The Mexican Government itself has in its legislation, as we have pointed out in another brief, and before in this, under the head of Paragraph I, (pp. 1 and 2) admitted that the proper person to apply the proceeds, according to the intention of the donors, was the Bishop of the Californias. We further deny, as a matter of right, that any person, other than the Bishop, could have properly administered the funds designed for the benefit of the Church, in accordance with the wishes of the

founders of the Pious Fund, and this position was fully recognized by Mexico in the several laws referred to in the course of this brief, as well as sustained by its established course of conduct.

The distinguished Minister of Foreign Affairs of Mexico further errs, as we have said, in his statement that any exclusive right on the part of the Mexican Government to invest the fund and apply its proceeds, has been recognized by the claimant. In reaching the conclusion maintained, he has made (as shown by note to translation of answer attached hereto) a partial and entirely imperfect citation from a brief on behalf of the Roman Catholic Bishops of California, omitting entire sentences and part of one sentence explaining and defining the position entertained by the Bishops. Correcting the errors and supplying the omissions, it is manifest that the contention of the parties in interest was that Mexico, as trustee, had charged itself with the payment of a definite amount, fixed by the Mexican Government at a sum equal to 6 % upon the total capitalisation of Pious Fund; that Mexico had recognized the definite character of the claim against her for a certain annual charge; that having assumed a trust relation, and undertaken to pay an annuity to the Bishop of California, she was not at liberty to disregard the undertaking. It may not, therefore, be said, and the language used on behalf of the Bishops can not be tortured into an admission, that Mexico has been recognized as having a right to administer the fund and dispose of the proceeds, otherwise than by delivery to the Bishops of the Californias.

VI.

This paragraph of the reply of Mexico would convey the inference, to support or to contradict which discovery has been asked by the United States, that since 1848 Mexico has centered its care and protection so far as the Pious Fund is concerned, on Lower California. We do not consider it in truth important whether this be the fact or not. The more important point is that the most considerable beneficiary, (the Catholic Church of Upper California, and the Missions subordinate thereto,) has received no assistance from the fund, to the income of which it was the principal claimant, since 1848, except as the result of the decision of the Mixed Commission. To show the disappearance of the Indians of Lower California we again refer to Exhibit C, herets attached.

VII.

We are left at a disadvantage in replying to this paragraph of the answer of Mexico, the right being reserved by that country of presenting in the course of the proceedings a basis for a settlement, which, as it is said, Mexico has not yet found it possible to conclude. Nevertheless there are certain considerations which should be submitted.

Instead of the suggestion next made by Mexico that justice demands the privilege of payment in silver of any judgment against that country, we insist that justice would more naturally require that interest be charged against Mexico on every yearly instalment from the 24th day of October of each year to the date of the Protocol providing for the present Court.

Mexico occupies the position of a trustee. The unquestionable duty of a trustee is to make payments to the beneficiary as they become due. A trustee who withholds payments therefrom is, and of right ought to be, chargeable with interest from the date of his default.

Mexico further charges the United States with having exaggerated the claim, because of the fact that in the former adjudication, there was included in the basis of calculation of the Court, the property that belonged to the Marchioness de las Torres de Rada, and says that its assertions with relation thereto "will no doubt astonish the claimants, who have made a minute study with regard to the donations of said properties made to the Pious Fund; but it is to be observed that there has very recently been discovered in the general archives of the Republic important data which verifies the foregoing statement," (the statement being that the value of the properties of the Marchioness de las Torres de Rada formed the greater part of the amount demanded, and that there was nevertheless no legal basis on which to claim it).

The claimants are astonished by this assertion, but not quite in the manner anticipated by Mexico. The facts contained in the volume of ancient records (Pleito de Rada) produced by Mexico were substantially all familiar to the claimants in the suit of Alemany vs. Mexico, as will appear by reference to pages 518—521 of the Transcript. Therein will be found a history prepared by Pedro Ramirez, the Agent of the Bishop of California, substantially complete in all respects, and in general agreement with the volume Mexico now produces. For the purpose of the further enlightenment of the present Tribunal, we have added in the form of an Appendix to this replication, an abstract of the contents of the volume in question, together with a copy of the

decree contained at its close, translated into English, the summary so added being supplemented as to some of its details by reference to the review of the litigation written by Ramirez and before referred to.

At the present time, we shall direct the attention of the Court to but one or two facts. The decree closing the volume in question was not a final decree settling the title of the property, as might fairly be implied from the Mexican answer. To the contrary, while determining the title to certain offices, it remanded the cause to the lower court to settle the question of the rights in the other property of the Marchioness and her successors, together with the other litigants, "in order that they may make use of it as they see fit, according to the respective rights deduced in that audiencia where they shall execute it." It thus appears that the record Mexico has now supplied to the Court is incomplete and imperfect, and reference must be made to the statements of Ramirez for information as to the further course of the litigation. It is, however, apparent, taking the record and the statements of Ramirez in conjunction, that no order was ever passed declaring the Marchioness and her successors to be without interest in the lands claimed by them, but that there was finally granted simply a money judgment. No attempt seems ever to have been made to disturb the title of the Pious Fund to the Rada property, and the last step taken in the litigation was the levying of an attachment, not against the Rada and Villapuente property, but against the Ciénaga del Pastor and the house on Vergarra Street (Transcript, p. 520), both of which came to the Pious Fund from the property left by Madame de Arguëlles. It thus remains incorrect to say in effect, as has been averred in the answer, that the Pious Fund had no legal basis on which to claim the properties that belonged to the Marchioness de las Torres de Rada, and this particularly in view of the fact that the Fund was never disturbed in its possession thereof until it was sold by Mexico.

As to the money judgment in favor of the heirs of de Rada above referred to, it could have been settled prior to the reassumption of control by Mexico for the sum of $210,000 (Transcript, page 521). Mexico thereafter sold this particular property, despite the attachment, for a price which yielded for the interest of the Pious Fund $213,750, (see copy Escritura de Venta, Exhibit D, hereto attached) and so far as the record discloses, no part of this money was ever paid out in settlement of any supposed claim against the Fund, but Mexico received the exclusive benefit thereof, and failing to disclose this fact there was excluded from the calculations of the former commission (Transcript, Opinion of Commissioner Wadsworth, page 526, followed by Umpire, page 609) the

sum of about $200,000. Had all the facts with relation to the transaction been disclosed by Mexico to the Mixed Commission, there seems no doubt that a much larger award would then have been rendered against Mexico, but with the additional facts now before this court, in the event of the reopening of the former decision, the United States will insist strenuously upon the calculation of annuity in favor of the Pious Fund upon the additional amount of $213,750, as derived from the sale of Ciénaga del Pastor (the property so excluded) since 1848.

On behalf of the United States I respectfully submit that the allegations and prayers of the Memorial have not been met by the Answer of Mexico.

JACKSON H. RALSTON,

Agent of the United States and of Counsel.

EXHIBIT A.

Answer to the Memorial upon the Claim presented by the United States of America against Mexico in regard to the so-called "Pious Fund of the Californias."

Reserving the privilege to produce on the part of the Mexican Republic, in exercise of the right which belongs to it under the Protocol concluded in Washington the 22nd of May last, for the arbitration of this claim, proofs of the contentions which are hereafter set forth, and of others that may be appropriate, such as defenses and proper allegations, the undersigned, the authorised Representative of the Government of Mexico, asks that the Permanent Court of Arbitration of The Hague set aside the claim for the following reasons:

First. Lack of title of the Archbishop of San Francisco and of the Bishop of Monterey to present themselves as the legal trustees of the Pious Fund of the Californias.

Second. Want of right of the Catholic Church of Upper California to demand interests originating in the supposed fund.

Third. Insufficiency or extinction of title on which the Archbishop and Bishop, above mentioned, base their claim

Fourth. Non-existence of the object attributed to the institution of the fund, so far as regards Upper California.

Fifth. The exclusive right of the Mexican Government to employ the fund and dispose of the proceeds, without the intervention of the Church of Upper California.

Sixth. The use which the Government made of said right; and

Seventh. The exaggeration of the demand.

I.

The claimants agree with the Government of Mexico in admitting the following facts, proved by irrefutable documents:

First. The Jesuits were the original trustees or administrators of the properties which constituted the Pious Fund of the Californias up to the year 1768, when they were expelled from Spanish dominions.

Second. The Spanish Crown, in place of the Jesuits, took possession of the properties which constituted the aforesaid Pious Fund, and administered them by means of a Royal Commission until the independence of Mexico was achieved.

Third. The Mexican Government which succeeded the Spanish Government was, as the latter had been, trustee (comisario) of the fund, and in this conception, successor of the Jesuit Missionaries, with all the rights granted to them by the founders.

In order that the Archbishop and Bishop, the claimants, may be considered trustees (comisarios) by succession, as they contend, they would have to prove their actual position as successors in interest of the Mexican Government, to perpetual, general or particular title. In no other way could the attitude in which they present themselves as creditors against their alleged debtor be explained.

In fact, they claim as title of succession that the direct representation of the government, and the indirect of the Jesuits, was granted to them by the Decree of the Mexican Congress, issued on the 19th of September, 1836, which authorised the placing at the disposition of the Bishop of the Californias and his successors the properties belonging to the Pious Fund of the Californias, to be administered and invested in their enterprises, or other analogous ones, respecting always the wish of the founders. But the same claimants acknowledge that the aforesaid Decree was repealed on the 8th of February, 1842, by General Santa Ana, Provisional President of the Republic, invested with extraordinary powers, which devolve upon the Mexican Government the administration and employment of the proceeds of the properties in the way and manner which it should determine, in carrying out the objects proposed by the founders, — *the civilization and conversion of the heathen.* Later, on the 24th of October of the same year, the properties were directed to be sold and the proceeds to be incorporated into the National Treasury to constitute a secured annuity (censo consignativo) at the rate of 6% per annum, to be used for the purpose of the original foundation.

No later law granted to the Bishops of the Californias the right to receive and apply to their enterprises the interests of the aforesaid annuity. It is true that the Mexican Government issued another Decree, on the 3rd of April, 1845, directing that all the properties of the Pious Fund of the Californias, remaining unsold, should be returned to the Bishop of the Californias, and to his successors, for the ends set forth in Article 6 of the Law of September 19, 1836, without prejudice (it was said) "to what Congress shall afterwards determine concerning the properties already disposed of." Although the tenor of this Decree gave an excuse to the Umpire under the Mixed Commission of 1875 to declare that the obligation of remitting to the Bishop the proceeds of the fund was recognized in it, it has not seemed advisable to the claimants' attorneys to allege it in support of their present claims, certainly because that Decree refers to *unsold* properties, whose value clearly had not been incorporated into the National Treasury, and not to the revenues or interests upon the proceeds of the properties sold, touching which Congress had expressly reserved the right to decide. This right was never exercised, and therefore the last Decree has not bettered the situation in which the Bishop of the Californias was placed by the Decree of the 8th of February, 1842, which deprived him of the charge of using for the missions the revenues

from the annual 6 % upon the proceeds of the properties sold. — which revenues are the only subject matter of the present claim.

II.

The Catholic Church of Upper California never could, of its own right, administer the Pious Fund of the Californias, nor demand its proceeds, for the simple reason that they were not granted it by the founders, nor by the Jesuits, who were the original trustees, (*comisarios*) nor by the Spanish Government that succeeded them, nor by the Mexican Government that succeeded the Spanish, and which, like that government and the Jesuits, acquired the right of using the properties of the fund in question for the missions of the Californias, or for any others within its dominions, at its free will and discretion alone. Such discretionary power will not permit coercion, which is an attribute of perfect right. Therefore, although for the sake of the argument, the representation of the Jesuit Missions (expressly suppressed by Pope Clement XIV since the year 1773) might be conceded to the Catholic Church of Upper California, that church would have no right to demand the interests of the Pious Fund.

The decree of the 19th of September, 1836, above cited, on which the claimants pretend to base their rights, only conferred on the first Bishop of the Californias and upon his successors the administration of the fund, during the will of the government, with the obligation of employing the income for the ends indicated by the founders or for other like objects; but did not give either to them or to the church they represented, an irrevocable right; and, moreover, it (this decree) was repealed by that of the 8th February, 1842, which withdrew from the Bishops of the Californias the administration of the Fund and devolved it upon the government.

III.

No existing law being able to establish any title to this claim, the claimants wish to supply it with the so-called foundation deed of the pious work, or with the decision rendered by the Mixed Claims Commission, established at Washington under the Convention between Mexico and the United States, signed on the 4th of July, 1868, which decision was given on the 11th of October, 1875, claiming it to cause *res judicata.*

A.

As to the first, it will suffice to show that it does not favor the pretentions of the claimaints, to quote the following clauses from the

instrument which they take as an example of the donations that were made to the Fund *):

"This donation . . . . . we make . . . . . to said Missions founded, and which may hereafter be founded, in the Californias, not only as for the maintenance of their religious, and to provide for the support and conduct of divine worship, but also to aid the native converts and catechumens by the same (probably "from the misery") of that country: so that if thereafter, by God's blessing, there be means of support in the "reductions" and missions now established, — as ex. gr. by the cultivation of their lands, *thus obviating the necessity of sending from this country* clothing and other necessaries, — the rents and products of said estates *shall be applied of (surely to) new missions* . . . and in case *the society of Jesus, voluntarily or by compulsion should abandon said missions of the Californias, or,* which God forbid, the natives of that country should rebel and apostatize from our holy faith, or *in any other (such) contingency, then, and in that case, it is left* to the discretion of the Reverend Father Provincial of the Society of Jesus in this New

*) The full and exact trusts, including all omitted portions read as follows: *To have and to hold*, to said missions founded, and which hereafter may be founded, in the Californias, as well for the maintenance of their religious, and to provide for the ornament and decent support of divine worship. as also to aid the native converts and catechumens with food and clothing, according to the destitution of that country; so that if hereafter, by God s blessing, there be means of support in the "reductions" and missions now established, as ex. gr. by the cultivation of their lands thus obviating the necessity of sending from this country provisions, clothing and other necessaries, the rents and products of said estates shall be applied to new missions to be established hereafter in the unexplored parts of the said Californias, according to the discretion of the Father Superior of said missions; and the estates aforesaid shall be perpetually inalienable, and shall never be sold, so that, even in case of all California being civilized and converted to our holy catholic faith, the profits of said estates shall be applied to the necessities of said missions and their support: and in case that the reverend Society of Jesus, voluntarily or by compulsion, should abandon said missions of the Californias or (which God forbid) the natives of that country should rebel and apostatize from our holy faith, or in any other such contingency, then, and in that case, it is left to the discretion of the reverend father provincial of the Society of Jesus in this New Spain for the time being, to apply the profits of said estates, their products and improvements, to other missions in the undiscovered portions of this North America, or to others in any part of the world, according as he may deem most pleasing to Almighty God; and in such ways that the government of said estates be always and perpetually continued in the reverend Society of Jesus and its prelates, so that no judges, ecclesiastical or secular, shall exercise any control therein, or intervene in or about the same; and all such rents and profits shall be applied to the purposes and objects herein specified, i. e., the propagation of our holy catholic faith. And by this deed of gift, we, the said grantors, both divest ourselves of, and renounce absolutely all property, dominion, ownership, rights and actions, real and personal, direct and executive thereover and all others whatever, which belong to us, or which from any other cause, title or reason, may belong, or appertain to us; and we cede, renounce and transfer the whole thereof to said reverend Society of Jesus, its missions of Californias, its prelates and religious, under whose charge may happen to be the government of said missions and of this province of New Spain, now and at all times hereafter, in order that from the profits of said estates, and the increase of their cattle, large and small, their other gains, natural or otherwise, they may maintain said missions in the manner above proposed, indicated, defined and laid down forever. (Following parts of quotation not included as not properly trusts.) — J. H. Ralston, Agent United States.

Spain, for the time being, to apply the profits of said estates, their products and improvements, *to other missions in the undiscovered portions of this North America, or to others in any part of the world, as he may deem most pleasing to Almighty God; and in such a way that the government of said estates be always and perpetually continued in the Reverend Society of Jesus and its prelates, so that no judge, ecclesiastical or secular, shall exercise any control therein* . . . . we desire that at no time shall this donation be set aside nor shall any judge, *ecclesiastical or secular, undertake to investigate or intervene to ascertain whether the conditions of this donation be fulfilled; for our will is that in this matter, there shall be no pretence for such intervention, and that whether the said reverend Society fulfills or does not fulfill the trusts in favor of the missions herein contained, it shall render account to God, Our Lord, alone."*

B.

The decision above referred to, rendered in Washington on the 11th of November, 1875, could not prejudge the present claim, which, therefore, can not be regarded as *res judicata.*

Now we are treating of a claim for new interests, and even if the claimants maintain that in condemning Mexico to pay the accrued interests up to a certain date, it was declared impliedly that the capital existed and would continue to produce revenues, those would be considerations or reasons (motifs) for the judgment which was made that the Republic of Mexico must pay a definite amount of accrued interest to which the claim was limited.

The immutability of a judgment and its force *as res judicata* belong alone to its conclusion *(conclusión);* that is, to that part which pronounces acquittal or condemnation, *quod jussit vetuitve.* This proposition is scarcely open to question, and therefore the greater part of authorities, in expounding the theory of *res judicata*, attributes it to the decisory part of the judgment, so that its extension to the reasons (motifs) is a matter of controversy only to a few.

Among those who favor that extension are found, it is true, authorities as noted as that of Savigny; but there are no less noted ones, and they are in greater numbers, who hold the contrary opinion. The same noted authority that I have just named, declares that:

"It is a very old doctrine sustained by a large number of authorities, that the legal principle of *res judicata* belongs *exclusively* to the decision (resolución), and the reasons are not embraced in it," summing up his doctrine in these terms:

"The force of *res judicata* does not exist except in the decisory part of the judgment."

(Savigny. Droit Romain, § 291. T. 6. p. 347. [1])

"The greater number of authorities," he adds, "deny absolutely to the reasons (motifs) the force of *res judicata, not excepting the case where*

[1]) The exact language of M. Savigny is as follows:

"C'est une doctrine fort ancienne et soutenue par un grand nombre d'auteurs que l'autorité de la chose jugée appartient au jugement seul, et non à ses motifs, et cette doctrine se résume en ces termes: L'autorité de la chose jugée n'existe que pour le dispositif du jugement". (Savigny, vol. 6, p. 357.) J. H. Ralston, Agent United States.

the reasons (motifs) are a part of the judgment. (§ 293, T. 6. p. 382.) [1])

Griolet expresses himself as follows:

"The judgment supposes always several propositions which the judge has had to admit in rendering a decision upon controverted rights and which under our law (the French) the judgment usually expresses: these are the reasons (motifs). We have already shown in opposition to the opinion of Savigny, that neither the subjective nor objective reasons (motifs) should share the authority of the judgment, because the judge has not the duty of deciding upon juridical principles nor upon the existence of facts.

* * * * * We have, then, already shown, in all cases that may be presented, that the authority of *res judicata* does not embrace the reasons (motifs) of the judgment, *nor even the affirmation or denial of the cause of the rights adjudged.*" * * * *

The same writer adds: —

"None of our authorities, in fact, have shown a system analogous to that of M. Savigny upon the authority of the reasons, and French jurisprudence recognizes the principle that *res judicata* does not extend to any of the reasons of the sentence."****

On the authority of *res judicata*, pages 135, 168, 169 and 173.) [2])

As to Prussian law, the same Savigny says: —

"Regarding the force of the reasons, a text exists that at first glance appears to exclude it absolutely, giving the greatest importance to the part that contains the judicial decision. (Allg. Gerichte Ordnung I. 1313. p. 38.) Judges and those rendering decisions must carefully distinguish the real judgment from the reasons (motifs), and give them a distinct place, and never confuse them, *because simple reasons should never have the force of res judicata.* (D. R. § 294, T. 6, pages 389 and 390.)" [3])

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1) "La plupart refuse absolument aux motifs l'autorité de la chose jugée sans même excepter le cas où les motifs font partie intégrante du prononcé du jugement." (Savigny, vol. 6, pp. 393, 394.) J. H. Ralston, Agent United States.

2) "La decision suppose et le plus souvent, dans notre droit, le jugement exprime, diverses propositions que le juge a dû admettre pour rendre sa déclaration sur les droits contestés. Ce sont les motifs. Nous avons déjà montré, contrairement à l'opinion de M. de Savigny, que ni les motifs subjectifs, ni les motifs objectifs ne doivent participer à l'autorité des jugements, parce que le juge n'a pas mission de prononcer sur la vérité des principes ou sur l' existence des faits." (Griolet, p. 113.)

Nous avons aussi montré dans toutes les hypothèses l'autorité de la chose jugée refusée à tous les motifs des jugements, même à l'affirmation ou à la négation de la cause des droits jugés." (Griolet, p. 117.)

Aucun de nos auteurs en effet n'a enseigné un système analogue à celui de M. de Savigny sur l'autorité des motifs. Et la jurisprudence reconnaît en principe que l'autorité de la chose jugée ne s'etend à aucun des motifs de la décision. (Griolet, p 103.) J. H. Ralston, Agent United States.

3) Quant à l'autorité des motifs, il y a un texte qui au premier abord semble l'exclure absolument et attacher la plus haute importance à la place qu'occupe une décision judiciaire.

Allg. Gerichtsordung, I, 13 § 18: Les collèges de juges et les rédacteurs des jugements doivent soigneusement distinguer la décision réele de ses motifs, et leur assigner une place distincte, et ne jamais les confondre, car de simples motifs ne doivent jamais avoir l'autorité de la chose jugée. (Savigny, Vol. 6, p. 401.) J. H. Ralston, Agent United States.

Spanish tribunals have constantly excluded appeal for annulment attempted against the foundations of a definitive sentence, by not recognizing in them except in the decisory part, the force of *res judicata*, the only subject for appeal. (Pantoja, Rep. pages 491, 955, 960, 970 and 979.)

In the particular case (which is ours) of a demand for interests founded on a judgment which declared them due, after having heard the pleas of the defendant against the right that claimed the capital or rent, Savigny is of opinion that this right has in its favor the force of *res judicata;* but, at the same time, he observes that Buchka solves the question in the contrary sense in accordance with Roman law; that, in the same sense, the Prussian tribunals have solved it for the reason that the recognition of a right in the reasons (motifs) of a decision does not appertain in fact to the judgment, whose decisory part alone constitutes *res judicata*; and Savigny adds: —

> "We have not, on this point, the decision of Roman law, and the texts that are usually cited are foreign to the matter. (D. R. § 294, Numbers 3 and 4, Note (r) of No. 7, and Section 299, No. 4, T. 6, pages 397, 401, 446.)" [1])

Nevertheless, it is positive that Ulpian says: —

> "Si in judicio actum sit usuraeque solae petitae sint, non est verendum ne noceat rei judicatae exceptio circa sortis petitionem: QUIA ENIM NON COMPETIT NEC OPPOSITA NOCET."

Such is the principle of the law 23 D., of Exc. Rei. Jud.; and even though it appears to be in contradiction with what follows in it, that apparent conflict of law is explained satisfactorily by Griolet, pages 46 and 47, to which I refer in order to avoid dealing at too much length with this subject. I have adduced all the preceding citations because up to this time, the point has been but lightly touched upon in the diplomatic correspondence in connection with the claim.

I must add, however, that if the foregoing is true respecting judgments rendered by judges invested with public authority to act in the case, their reasons (motifs) and inferences, (consecuencias) it is much more true with regard to awards rendered by arbitrators who have no real jurisdiction, nor other powers than those granted them in the arbitration agreement (compromiso). Thus it is that if all that relates to the plea and effect of *res judicata* is of strict (limited) interpretation, (Griolet. On the authority of *res judicata*, page 68) it must be much more so when it relates to arbitral awards.

Of these arbitral awards a Roman Law has said:

"De his rebus et rationibus et controversiis judicare arbiter

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[1]) Il en est de même quand le défendeur a été condamné à payer les intérêts d'une créance ou les arrérages d'une rente après avoir contesté le droit du demandeur au capital ou à la rente; ce droit se trouve investi de l'autorité de la chose jugée, par la condemnation. (*q*)

Nous n'avons sur ce point de décision du droit romain, et les textes que l'on a coutume de citer sont étrangers à la matière; (Savigny, Vol. 6, pp. 458, 459.) J. H. Ralston, Agent United States.

(*q*) Ici encore Buchka a bien résolu la question pour le droit actuel, mais pour le droit romain il a résout à tort en sens inverse. Vol. 1, p. 307, 308. Vol. 2, p 184, 191. J'ai déjà signalé, § 294, notes *n* and *r*, quelques décisions erronées des tribunaux prussiens sur cette question.

potest, quae ab initio fuissent inter eos qui compromisserunt, non quae postea supervenerunt. (L. 46 D, de recept. qui arb., T. L. p. 25)."

The civil law attributed so limited a scope to awards that it did not concede to them that they should produce the effect (accion) of *res judicata.* The first law of the Code *de recept* is to the following effect: —

"Ex sententia arbitri ex compromisso jure perfecto arbitri appellari non posse saepe receptum est; QUIA NEC JUDICATI ACTIO INDE PRAESTARI POTEST."

The inadequacy of arbitral decisions, under International Law, to decide future cases, although they may be analogous to those already decided, has been expressly recognized by the Government of the United States, as may be seen in Moores' "International Arbitrations," with regard to the Mixed Commission, convoked at Halifax under the treaty of Washington, which condemned the United States to pay to the British Government the sum of five and a half million dollars for damages and injuries caused by American fishermen, and in the case of a claim presented by the Spanish Minister, Sr. Muruaga, growing out of the confiscation of cotton, considered as contraband of war, which the Spanish subjects, Mora and Larrache, suffered. The Secretary of State, T. F. Bayard, said, in this connection in a note of the 3rd of December 1886; *)

"Decisions of Interinational Commissions ... are not regarded as authoritative, *except in the particular case decided ... they do not in any way bind the government of the United States, except in those cases in which they were rendered."* (Papers relating to the Foreign Relations of the United States, year 1887, page 1021.)

The same Honorable Secretary, in the document cited, (further) said:

"Such decisions are moulded by the nature and terms of the treaty of arbitration."

Taking into account without doubt that: "Omne tractatum ex compromisso sumendum: nec enim aliud illi (arbitro) licebit, quam quod ibi ut afficere possit cautum est: non ergo quodlibet statuere arbiter poterit, nec in qua re libet, NISI DE QUA RE COMPROMSSUM EST."

Referring to the stipulations contained in the aforesaid Convention of July 4, 1868, it is seen that the claims of American citizens against Mexico and of Mexican citizens against the United States, which were permitted to be submitted to the Mixed Commission, created by that Convention, must indispensably embrace the following conditions:

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*) The full paragraph referred to supplying all omitted matters and correcting the arrangement of words, reads as follows:

"But, aside from this criticism, I must be allowed to remind you that decisions of international commissions are not to be regarded as establishing principles of international law. Such decisions are molded by the nature and terms of the treaty of arbitration, which often assumes certain rules, in themselves deviations from international law, for the government of the commission. Even when there are no such limitations, decisions of commissions have not heretofore been regarded as authoritative, except in the particular case decided. I am compelled, therefore, to exclude from consideration the rulings to which you refer, not merely because they do not sustain the position for which they are cited, but because, even if they could be construed as having that effect, they do not in any way bind the Government of the United States, except in those cases in which they were rendered." — J. H. Ralston, Agent United States.

First. To have arisen out of transactions of a date later than the 2nd of February, 1848, and before the 1st of February, 1869, (the date of the exchange of ratifications of the Convention.)

Second. To be founded upon damages calculable in money caused to the persons or property of the claimants of either of the two countries by the authorities of the other.

Third. To have been presented to the Government of the claimants, and by it or in its name to the Mixed Commission within eight months (capable of being extended to eleven months) counting from the first meeting of the arbitrators.

It may be noted, therefore, that the claim for interests of which payment is now asked, could not be considered under the first or third of the above conditions. It seems useless to take up further time by showing or continuing to dwell upon the lack of *cause* with which *res judicata* is alleged in the new claim, which is now presented against the Mexican Government. The award rendered by the umpire in 1875 became complete and absolutely fulfilled with the payment that Mexico made of $904.070.79, Mexican Gold, to which it was condemned, and that award can not be applied to a new claim. Admitting in virtue of all the allegations that the present claim is not declared already determined by the award rendered in 1875, the first objection, — the clearest plea that we oppose to the claim, — is that any right that the claimants might have had in the beginning of the year 1848, was completely extinguished by the Treaty of Peace and Friendship which was celebrated the 2nd of February of that year between Mexico and the United States, because in Article 14 (of that treaty), it was declared that all debts and claims not decided up to that time and which the citizens of the latter of those nations should hold against the Government of the former would be considered ended and cancelled forever. The text of the article of that treaty which thus provides is as follows, and I quote it in English in order that it may be better understood by the party complainant. It reads as follows:

> "The United States do furthermore discharge the Mexican Republic from all claims of *citizens of* *) the United States not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty, which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the Board of Commissioners provided for in the following article, and whatever shall be the total amount of those allowed."

The answer which the claimants have made to this peremptory provision amounts to saying that they do not demand the interests accrued before the date of the treaty, but those accrued since that date, and they have not demanded the principal, because they do not think they have any right to it; Mexico being able to indefinitely retain it. In giving this answer, they do not reflect that the fourteenth article, above cited, not only exonerates Mexico from the claims or demands which might be thereupon presented, but from all claims not

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*) The words in italics "*citizens of*" omitted in the answer. J. H Ralston, Agent United States.

heretofore decided against the government, and in this class was included the claim of the Pious Fund, not only the capital but also the interests being comprehended therein. All that, in fact, is understood in the English word "claim," which means as well the claim or demand which is made to something to which we believe ourselves entitled, as to the cause, origin or foundation for that claim: "*A right to claim or demand something; a title to any debt, privilege or other thing in possession of another; also a title of anything which another should give or concede to or confer on the claimant,*" according to Webster's dictionary, which is the best authority on definitions in the United States, and possibly wherever English is spoken. (See Webster's English Dictionary, under *Claim*, the second acceptation of word.)

This interpretation of Article XIV is corroborated by reading the beginning of the article following, Article XV, the text of which is as follows;

> "The United States exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled."

Here is seen the distinction made between *demands* and *claims* and that this last word is used in the sense of the title or right which gives rise to a claim.

Nor could it be otherwise, when it was very clearly the intention of this agreement to leave nothing pending that might alter or disturb the peaceable and friendly relations which were renewed in that treaty. By this was made, as is frequently done in similar treaties, an agreement to completely cancel all claims and demands for indemmity pending, or which for past acts might arise between the two governments, providing also for the settlement of private claims. The same article, the fifteenth, the beginning of which I have copied, provided that three and a quarter millions of dollars be reserved to satisfy the claimants, as far as their claims should be approved by an American Commission which it ordered created for that purpose, and which was created by the Government of the United States, a Commission before which, if aware of their right, the representatives of the Catholic Church of Californias would have presented it. If they did not do so, they can not, on that account, now make the claim against Mexico, which is released from all liability, from all demands on account of the claims of their (of the United States) citizens.

It seems inconceivable, in view of these articles of the treaty of Guadalupe Hidalgo, the most solemn we have ever celebrated with a neighboring nation, and which is in force because it is perpetual in character, that it should be claimed that the debt known as the Pious Fund had not been cancelled in virtue of its stipulations. What privilege did this Fund have to be excluded from the positive declaration of the treaty? Is it not strange that the attorneys of the claimants in their zeal to reply to this plea, should have wished to limit the meaning of the treaty on this point, to cancel the interest of the fund prior to February, 1848, and, what is scarcely less explicable, is that the arbitral award subscribed by Sir Edward Thornton should have accepted the same interpretation. For this, among other reasons, we consider

said judgment as notoriously unjust, there being no injustice more manifest than the judgment pronounced by an arbitrator who decides a question between citizens of one country and the government of another, ignoring the stipulations of a solemn treaty made by both countries, the force which no one disputes.

In case it should be determined (contrary to all probability) that the treaty of Guadalupe Hidalgo left in force the claims of American citizens against Mexico relative to the Pious Fund, and existing, as alleged, at the time of celebrating said treaty, there is still another ground upon which that claim might be cancelled, and consequently the right to collect interest on capital. It is well known that the Mexican Republic, in the exercise of its sovereignty, and for high political reasons, which the Mexican Commissioner explained in his opinion of 1875, ordered in the years 1856 and 1859, first, the disentailing, following it by the so-called nationalization of the church property, but which, properly speaking, was not actually such, but only the prohibition to the clergy of continuing in control of those national properties. If, as has been properly said, the validity and principles of this provision can be disputed from the standpoint of canon law, from a political and social point of view, they are unquestionable, and no less so in view of the favorable results which that action has produced in the way of establishing peace and of promoting the general welfare of the Republic.

From the standpoint of common law, and private international law, it seems clear that the capital whose interest is claimed in the character of a secured annuity, (censo consignativo) or of general annuity, (censo) and which should be considered as real property (Sala. Dro. Real de España, tom I, Lib. 2, tit. 14, and authors cited), was subject to the legislation of the country in which it was held, to the jurisdiction and statute law *rei sitae,* whatever might be the nationality of the annuitants.

On the other hand, it should be taken into account that the failure for many years to collect the interest which is now claimed makes it subject to the laws of limitations of the country concerning which Article 1103 of our Civil Code applies to the case, and says as follows:

"Emphyteutic or annuity pensions, revenues, rents, and any other loans whatsoever, not collected when due, remain barred in five years, counting from the maturity of each of them, even though the collection be attempted by virtue of a real or personal action."

If we are to suppose that the demand of the claimants was not cancelled by the decisive Article XIV of the treaty of Guadalupe Hidalgo, or on the other grounds which we have just reviewed, there

is yet another reason which would make it seem subject to Mexican legislation, to which an annuity, established by that Government in the year 1842 is undoubtedly subject. Said government, for the purpose of settling the public debt, issued, under date of June 22, 1885, a decree calling upon all its creditors for the examination and funding of their debts arising from supplies, employments, loans, or any other act or business which might become a charge upon the National Treasury, and for this purpose, it fixed a suitable time, which was extended on several occasions for the presentation of said claims. Article XV of the Law of September 6, 1894, was of the following tenor:

> "The debts, evidences of public indebtedness, and the following claims, are forever barred, without being able to constitute any cause of action, or to be of any validity whatever:.... All claims included in Articles I and II, which were not presented for this funding within the period fixed by the Article preceding or which, when they are presented, the interested party may not comply with the requirements of said decree."

It is undeniable that the supposed claims for capital and interest made against the Government of Mexico by the Archbishop and Bishops of the Church of Upper California were not presented for adjustment in compliance with the law of 1885, nor did the pretended creditors avail themselves of the new period which the said decree of 1894 granted them in Article XIV as a final and last ressort. The lapse (caducidad) or barring of suit, or supervening plea, would leave without effect even a former judgment having the force of res judicata, — a principle of well investigated law recognized even by the present claimants.

IV.

The claimants state that the object of the Pious Fund of the Californias was to provide for the conversion of the Indians and for the support of the Catholic Church in the Californias. This being a double object, it is necessary to distinguish between the two parts which constitute it. The first part, the conversion of the pagan Indians to the Catholic faith and to the obedience of Spanish authority, is unquestionable, and must be considered as the principal and direct object of the missions entrusted to the Society of Jesus by the Catholic King, endorsed by the founders of the Pious Fund, and subsidized by the Public Treasury of Mexico. The other part of the object, that is, the support of the church in California, was not the principal or direct object of the establishment of the fund, but the means of carrying out the spiritual conquest of uncivilized Indians through the religious missionaries.

This distinction being made, it is understood that the Catholic worship was an object of the missions subordinate to the spiritual conquest of the uncivilized Indians; hence it follows that the non-existence of uncivilized or idolatrous Indians in a specified region, or of the suppression therein of the Catholic missions, instituted for the purpose of subjugating or christianizing them, should entail at the same time the withdrawal

of the support offered the missionaries; not their exclusive application to fostering the Catholic faith, otherwise it would be an open violation of the intention of the benefactors who founded said pious work. Upon the expulsion of the Jesuits ordered by King Charles III and the consequent cessation of the missions of New Spain, the suppression of the order followed, which Clement XIV declared in his Bull, issued the 21st day of July 1773, Paragraph 32 which reads —

> "But as regards the religious missions we desire to extend and include all that has been decreed concerning the suppression of the Society (of Jesuits), reserving (at the same time) the privilege of providing the means by which not only the conversion of the infidels but also the peaceful settlement of dissensions may be obtained and secured with greater facility and stability."

And it is a fact worthy of note that the missions founded by the Jesuits never extended beyond the limits of Lower California. The mission farthest North that they had in charge was that of Santa Maria, below the 31st degree of latitude, and was therefore outside of the limits of Upper California, as fixed in the Treaty of Guadalupe Hidalgo.

The missions of Upper California were undertaken after the expulsion of the Jesuits, by the orders, not of the Society of Jesus, nor of the Holy See, nor any other ecclesiastical authority, but of the viceroy of New Spain, with the approval of the King in 1769 and 1762 *).

As National enterprises, the missions of Upper California were naturally abandoned by the Mexican Government when the United States acquired that region. The abandonment became necessary by the change of authority and jurisdiction over the territory disposed of to the United States, and, moreover, the Mexican Government had the original authority which it had inherited from the Spanish Government to *abandon missions and establish other new ones for the conversion of infidels within its dominions.*

Not only did the missions of Upper California cease on the 7th of July, 1846, as national enterprises in charge of the Mexican Government, but the Catholic Church itself ceased as a legal entity, inasmuch as its re-establishment as a corporation did not go into effect until the 22nd of April, 1850, in virtue of the statute of that date of the State of California.

Finally, it is necessary to take into account that in Upper California there exist no tribes of uncivilized Indians, whose subjugation to the secular power of New Spain and conversion to the Catholic faith, was the principal object or direct end of the missions of the Jesuits endowed with the properties of the Pious Fund of California.

V.

The right of investing the fund and applying its proceeds according to the intentions of the donors of the properties which constitute it, were legitimately exercised without the intervention of ordinary clergy,

*) Should be 1772. J. H. Ralston, Agent United States.

first by the Jesuits, followed by the Spanish Crown, and lastly by the Mexican Government. The claimants can never prove that any legitimate authority has ever made any law or decree to restrict that right. In exercise of this right, the Mexican Government ordered by the decree of September 19, 1836, that the administration of the Fund be given to the Bishop of California and his successors as dependents of said Government; the same commission was withdrawn from the Bishop and his successors by the decree of February 18, 1842; the sale of the properties which composed the fund and its constitution into the secured annuity (censo consignativo) upon the National Treasury was ordered by decree of October 24, 1842; and two and one-half years later, by the decree of April 3, 1845, the "creditos" and other properties were ordered returned to the then Bishop of California and his successors, reserving expressly the right to dispose of the proceeds resulting from the properties sold, the interest on which is the very subject matter of this claim.

This exclusive right of the Mexican Government is recognized on the part of the claimants.

In the reply made February 21, 1901, to the Honorable John Hay, Secretary of State of the United States, by Messrs. Jackson H. Ralston and Frederick L. Siddons, attorneys for the Roman Catholic Bishops of California, are found the following words: *)

> "No dispute has ever been raised as to the right of the Mexican Government to administer the property in question. — Mexico must continue the trust relation which she has herself assumed. — It should be borne in mind that we never have

*) A full and complete extract from the Diplomatic Correspondence (p. 52) above quoted partially and imperfectly, reads as follows.

"No dispute has ever been raised as to the right of the Mexican Government to administer the property in question and charge itself, as a trustee, with the payment of a definite sum. No demand has ever be made for the repayment of the principal sum. The Bishops of California and all other parties in interest have treated their claim against the Mexican Government as being a claim for an annuity; the amount of which annuity had been fixed by the Mexican Government at a sum equal to 6 per cent upon the total capitalization. Mexico by her acts in 1842, recognized the definite character of the claim against her, acknowledging a liability, not for the principal, but for a certain annual charge. After having herself stamped this character upon the claim of the Pious Fund, Mexico cannot now say that the claim is to the principal and not to an annuity, and a claim for the principal, if such existed, being barred by treaty stipulation, no claim for the annuity can exist. Mexico must continue the trust relation which she has herself assumed.

The difference now insisted upon is more than verbal; it is substantial, and is to be borne in mind when it is suggested to us, as it has been by the Mexican Secretary of State, that we have lost our claim to the principal because such claim was not presented under the treaty of 1848; the fact being that at no time under the Mexican decrees could a claim for the principal have been entertained.

It should be borne in mind that we never have had or made any claim to the principal. From its origin it has been in the hands of trustees; first the Jesuits; then the Spanish Crown; then the Government of Mexico; then in the Bishop under the law of 1836; then from Feb. 8, 1842, again in the Mexican Republic. All of these changes were accomplished by law—the act of the sovereign." J. H. Ralston, Agent United States.

had or made any claims to the principal. From its origin it has been in the hands of trustees; first, the Jesuits; then in the Spanish Crown; then the Government of Mexico; then in the Bishop under the law of 1836, then from February 8, 1842, again in the Mexican Republic. All of these changes were accomplished by law — the act of the sovereign."

VI.

The use which the Mexican Government made of the sovereign privilege to reassume the right of administering the fund or investing its proceeds to the exclusion of the church of California in 1842, can not be considered in law prejudicial to the party claimant. *"Qui jure suo utitur neminem laedit."*

Nor for the same reason can the fact that this government, since it ceased to exercise authority over Upper California, should have centered all its care and protection on Lower California, not only in the civil but also in the ecclesiastical order, and discontinued consequently to apply to Upper California the revenues intended to foster the Catholic Missions, justify the claim against the Mexican Republic.

The missions of the Jesuits having discontinued in that territory, there remained no necessity that its inhabitants should receive from Mexico supplies, clothing and other means of subsistence; its lands were about to come under cultivation, as in fact they did, with marvelously productive results; and under these circumstances the Government was at liberty, as trustee, (comisario) in place of the Jesuits, to apply the proceeds of the Fund to other missions, without exposing itself to censure, complaint or claim from anyone, conforming entirely to the will of the founders, expressed in the foundation deed of the fund, according to the language of the text above cited.

VII.

The exaggeration of the demands, or *plus petición,* is demonstrated in various ways, and, reserving the privilege of presenting in the course of the proceedings a basis for a settlement, which up to this time it has not been possible to conclude, I make the following observations.

In the first place, it is most evident that to solicit now, in Mexican gold money, the payment of the interests which are claimed because other interest on the same capital were ordered paid in this money by the award made in November of 1875, is to ask more than double what the interest would amount to at 6 %, to which right is claimed. The reasons consist in this, which no one denies: in 1875, the ratio between the value of gold and silver was almost exactly sixteen to one; the value of gold later having more than doubled that of silver.

Now, then, in pesos of silver, and in no other way, were the properties of the Pious Fund valued, and for the value which this money represented, they were sold, and the amount resulting from the sale recognized by the Mexican Government in favor of said Fund. Mexico has never had, nor has it now, any other standard for its money than the silver peso; its gold money is coined in very small quantity, and is not used to regulate the commercial values. When the claimants ask for interest in so many dollars, they speak of dollars of their own country, as they are there called, with the understanding that they are of gold. The Mexican gold, of which they speak, is at very slight discount with respect to American gold; but in every case the *dollars* of Mexican gold are of more than double the value of the silver dollar, in which money only could the interest of the Pious Fund be collected, if they should belong to the claimants.

Therefore the claim of the Bishops of California is usurious in asking, not only 6 % on the capital, but much more than 12 % per annum.

Another of the exaggerations of the claim is the endeavor to collect, not the half (which is even too much) of the interest on capital, since the other half would have to be applied to the Missions in Lower California, but now 85 % is asked, because this is the proportion, it is said, between the populations of Upper California of the United States, and Lower California of Mexico. Thus it is argued as if it had been intended that the fund should be applied to the entire population, and not to the conversion and improvement of uncivilized Indians. This reasoning would only have held good if the entire population of both Californias were of barbarous Indians. This argument, then, can not be sustained, which demonstrates only the zeal, disproportionate in this case, of the attorneys and counsellors of the claimants. In order to comply with the spirit and intention of the founders, the proportion should be made between the unconverted and uncivilized Indians of one of the Californias in comparison with those of the other; and it is now known that in that belonging to the United States, there are not many, perhaps not even one, in that condition.

Another exaggeration of the claim consists in including in the amount demanded the value of the properties that belonged to the Marquis de las Torres De Rada. The value of these properties form, undoubtedly, the greater part of the amount demanded, and there is, nevertheless, no legal basis on which to claim it. This assertion will, no doubt, astonish the claimants, who have made a minute study with regard to the donation of said properties made to the Pious Fund; but it is to be observed that there has very recently been discovered in the general archives of the Republic important data which verify the foregoing statement. These data are contained in the book printed in the 18th Century, which accompanies the present reply, and whose authenticity will be properly and opportunely proved. In it is given the history of the protracted litigation concerning the inheritance of the Marquis de las Torres de Rada, and at the close of the suit, the supreme "consejo de Indias" in Spain, the court of last resort capable of acting in the case at that time, declared null and without value the inventories and valuations of the properties which remained at the death of

the said Marquis, as well as the adjudication which was made of it to the Marchioness, his widow. This judgment of the court of last resort rendered the dispositions of the Marchioness, widow of Torres de Rada, worthless, and therefore those of the Marquis de Villapuente in the will which the latter made with power to will from his cousin the Marchioness. Now, then, said will was the basis of the donation which both made to the Pious Fund of certain properties which did not legally belong to either of them. I will not prolong this matter with explanations, but refer to the accompanying book, principally to the concluding judgment, and whose original, as will be proved at the proper time, exists in the Spanish Archives of the "Supremo consejo de Indias." There can be no doubt as to the nullity of the donation made by the Marchioness to the Pious Fund of properties which did not belong to her, by the recognized principle of *Nemo plus Juris Transferre Potest Quam ipse Habaret.* There should at least, then be deducted from the sum demanded by the claimants the value of the properties to which I refer.

In conclusion, I believe I have demonstrated —

1. That the claimants lack the right of presenting themselves as legitimate trustees of the Pious Fund of the Californias.

2. That the Catholic Church of Upper California has no right to exact from the Government of Mexico the payment of interest upon the supposed capital or fund.

3. That the rights alleged by the Archbishop and Bishop, the claimants, are either inadequate to sustain the case or they have been cancelled chiefly by the Treaty of Guadalupe Hidalgo, which cancelled "all claims of citizens of the United States against the Republic of Mexico," exonerating the latter from all demands on account of claims against it, which were in existence February 2, 1848, in favor of said citizens, as is seen in Articles XIV and XV of the Treaty. Even in the absence of this Treaty, the right of the claimants would have been concelled by the various general laws which were made successively by this Republic, to which, without doubt, the annuity (*censo)* which constituted the Pious Fund was subject.

4. That the real object of this Fund, the purpose for which it was intended, was the conversion of the barbarous Indians to christianity and their civilization and this being so, that there are now no barbarous Indians to whom to apply it in California.

(5. No such number given in original.)

6. That the right rests with the Mexican Government and with it alone to direct in its territory or out of it this or other application of the fund, without any obligation to account to the Bishops of California for its action in the matter.

7. That if the claimants should have any right to collect interest, it would not be for the sum which they ask, which is excessive inasmuch it has been calculated in gold dollars, when the sums which were taken

for its basis have been in silver dollars, and to-day the difference between the two moneys is not the same as in 1875, when Mexico was condemned to pay other interests in gold. Moreover, the portion of interest which belonged to Upper California is computed according to the population, and not by the number of Indians in whose conversion it has to be employed, and, lastly, the properties donated by the Marchioness De las Torres de Rada are included in the value of the Pious Fund, when new evidence proves the nullity of that donation.

For these reasons and others which will be alleged when the opportunity arises, I respectfully pray in the name of the Mexican government to the Court to disallow the claim brought against this government by the representatives of the Catholic Church of California, a claim contrary in general to justice, and in particular to the Treaty of Peace and Friendship in force between the Mexican Republic of the United States of America.

MEXICO, August 6, 1902.

IGNACIO MARISCAL,

Minister of Foreign Affairs.

EXHIBIT B.

RÉSUMÉ OF LITIGATION RELATING TO THE RADA PROPERTY REFERRED TO IN THE ANSWER OF MEXICO.

This synopsis is taken principally from the statement of the cese, contained in the first eleven pages of Document No. 3 in the volume produced by Mexico.

The Mexican exhibit consists of the following documents, which are bound together in the order in which they are here enumerated:

1. Memorial of Don Joseph de Rada, as ordered by the Supreme Council of the Indies, in the matter of his claim against the widow of the Marquis of Torres de Rada, and the Marquis of Villapuente; dated at Madrid, January 11, 1748;
2. Addition to the foregoing memorial.
3. Argument in support of the memorial of Don Joseph de Rada, printed in Mexico in 1742.
4. Statement made by the Attorney appointed to defend the estate of the Marquis Villapuente, dated 1741.
5. Legal defense of the missions of California as the devisees of the widow of the Marquis of Torres de Rada in the matter of the distribution of his estate, as ordered by the judgment at the end of the Volume, dated Mexico, 1759.
6. Judgment of the Royal and Supreme Council of the Indies, dated, Madrid, April 16, 1749.

These documents in substance recite that on the 23rd of April, 1713, the Marquis of Torres de Rada died, and as no will of his could be found, the Probate Judge in the City of Mexico proceeded to take the necessary steps to distribute the estate. The proceedings were opened on the 19th of May following, and by the testimony that was taken, especially by that of the Marquis's widow, Doña Gertrudis de la Peña it appeared that he had not left any natural heirs, except herself, his brothers and sisters in Spain, a nephew named Francisco, who was with her, another, a Franciscan novice, and a third in Spain. Accordingly, on June 23, of the same year, an order was made reciting that the Marquis had died intestate, and ordering the inventories and appraisements of his estate to be made, and all pertinent evidence to be produced, and referring the

cause to the Chief Justice of the Probate Court; further reciting that the appraisers should be named by the Marchioness and the Attorney of the Court (Defensor del Juzgado), reserving the right for any absent heirs to come in and prove their heirship. This order was communicated to the Attorney of the Court on the following day, and thereupon he and the Marchioness named the appraisers. After some time, that is, on the 28th of August, the attorney of the Court consented to the approval of the inventories then completed, and on the 29th of August, an order was made approving them and allowing Doña Gertrudis to take further steps in the matter.

On the same day she came into Court, reciting that the estate, as shown by the inventories, was insufficient to cover her separate estate (dote), and she asked that it be distributed to her, promising to pay the debts of the late Marquis, and claiming the right to ask for the distribution to her of any other property that might at any future time be discovered. Service of her petition was made on the Attorney of the Court, who consented to it, and an order was made on the 9th of September in accordance therewith. At the same time, the Judge declared that Don Andres, Doña Francisca, Doña Isabel, and Doña Maria Lorenz de Rada, brother and sisters of the late Marquis, to be his heirs, and in place of his brother Don Juan Antonio Lorenz de Rada and the other brothers, who were dead, their children should be so considered.

This order of the Probate Judge remained undisturbed until 1718, when Don Joseph de Rada appeared, through his guardian, and sought to compel the Marchioness to render an account of the expenditures and administration of the estate of the late Marquis, as well as to produce any evidence that she might possess concerning the title and expenditures of the Marquis; and asking certain information as to properties which she took as her separate estate (dote). Notice of this was served on the Marchioness. The moving party was the son of the late Don Juan Antonio Lorenz de Rada, who was the eldest brother of the deceased Marquis. Upon this demand, an order issued requiring that Doña Gertrudis produce all papers relating to the title of Marquis in her possession, as well as all account books and papers of the Marquis. From this order she appealed, but it was sustained. The Marchioness thereupon produced some papers of her husband, declaring them to be all that she could find that in any way related to his property, saying that she thought her late husband had not kept any books of account, whereupon Don Joseph de Rada asked that the inventories made in the estate of her husband be annulled, saying that they had been falsified. The Marchioness resisted the demand, and the court ordered that if the moving party considered that the properties had been undervalued in the inventories, he should bring forward some one who would offer more for them than the prices set down in said inventories. This was not done, and the demand was refused. An appeal was taken which was dismissed by the Audiencia Real on the 21st of July, 1721.

The suit remained in this condition until August 18th of the following year, when an attempt was made by the Marchioness to have Don

Gregorio Joseph del Pino appointed to be Chancellor, and after various steps in the courts she was, in 1724, referred to the King of Spain, and the Council of the Indies. From the orders submitting this appointment to the Council of the Indies, the Marchioness appealed.

At about this time, Don Joseph de Rada came forward, asking that he be furnished with copies of all the orders made in these proceedings. His demand was granted, and the Marchioness appealed: her appeal was dismissed, and she was enjoined from further proceeding. The order appealed from was confirmed in 1726. In view of the decision against the Marchioness, Don Joseph Lorenz de Rada came into Court, demanding that he be declared the successor to the title of Marquis, and that the rights and possession of the offices of Chancellor and Registrar be granted him, at the same time, asking that an account accompanied by payment over to him of the receipts of these offices, since 1713, be rendered him. To this the Marchioness made objection, producing a Royal Cedula of 1725, declaring that she was the person who should succeed to the title and offices. This paper was served on Don Joseph Lorenz de Rada, who represented that it could not abridge his rights in his demand, as it had been obtained by misrepresentation, and he insisted upon his rights.

An order was thereupon made for the production of the proceedings since November 26, 1729. (This must have been some years after the production of the Cedula).

The case remained in this state until March 12, 1738, when the Marchioness having died, Don Joseph Lorenz de Rada asked that the suit be revived as against her heirs and personal representatives. Notice of this revival was served on one Father Juan Francisco de Tompez, a Jesuit, the attorney in fact of the Marquis of Villapuente, whom the Marchioness had named as her executor and heir by an instrument (el Poder de Testar), executed before the Notary, Francisco de Valle, on October 15, 1735. He (the attorney in fact) contended that the whole controversy had been settled by the Royal Cedula of 1725, to which Don Joseph Lorenz de Rada replied that the Cedula had been obtained by misrepresentation, etc. The Court then learned of the death of the Marquis of Villapuente at Madrid, apparently without leaving any will, and it therefore appointed an attorney to defend his rights. This attorney set up practically the same defenes as Padre Tompez, and the Court then ordered that the evidence in the case be taken.

Don Joseph contended that he was entitled to the title of Marquis and all receipts of the offices of Chancellor and Registrar since 1713, as well as the property remaining over after the payment of the separate estate (credito dotal) of the late widow of his uncle.

The other parties asked that the suit be dismissed, and that all property distributed as the separate estate of Doña Gertrudis be exempt from this judgment.

This suit was decided by the Audiencia Real on December 20, 1742, against Don Joseph Lorenz de Rada, and he was condemned to pay costs, and enjoined from further proceedings. (These latter facts are set forth in the judgment of the Council of the Indies at the end of the Volume).

Furthermore, the right of appeal was denied him, and on this

account he instituted proceedings to take the matter to the Council of the Indies by an appeal to the King. These proceedings resulted in his being allowed to take an appeal from the judgment of the Court below, and the former judgment of the Audiencia Real of December 20, 1742, was reversed, and it was ordered that the parties appear in that Court to show their respective rights to the property left by the Marquis over and above the separate estate of his widow. This judgment was rendered without any notice to the heirs or representatives of the Marquis of Villapuente, or the Missions of California.

In accordance with this judgment, in 1752 an order of the Council of the Indies was made, formally referring the question of division of the properties of the late Marquis of Torres de Rada to the Audiencia Real of Mexico.

In 1759, the representatives of the Missions of California furnished a brief on the subject, which is to be found in the Volume just before the judgment of the Council of the Indies, and although it precedes said judgment in the arrangement of this exhibit, it is, in fact, ten years later in date. This brief recites the facts substantially in the same way as the argument made on behalf of Don Joseph de Rada, except that it brings the matter down to a later date. Upon reading it, it will be seen that the statement made by Pedro Ramirez (Transcript page 518 et seq.) is entirely correct.

We thus trace this suit, beginning in 1718, through all its stages, down to 1759. Mexico has not furnished any additional evidence bearing on the case, but the ultimate result of the whole litigation was considered and passed upon by the Mixed Commission of 1869. The history of the case from 1759, as given by Pedro Ramirez, brings it down to 1840. At that time the claimant, Senor Jauregui, was willing to settle for $210,000.00 (Transcript, page 520).

In making his award, the Umpire followed the American Commissioner's opinion, and rejected the estate of Ciénega del Pastor, because it was under attachment at the instance of Sr. Jauregui. This property was afterwards sold for $213,750.00, as will be seen by the deed of sale, executed by order of the Mexican Government, on November 29, 1842, in the City of Mexico, before the Notary Ramon Villalobos, a copy of which is in evidence as Exhibit D.

SENTENCIA DE EL REAL, Y SUPREMO CONFEJO DE INDIAS.

Senores: La Isequilla, Regalía, Cornejo, Contreras, Aguero.

Vistos por los del Supremo Consejo de Indias en Sala de Justicia en virtud de Real Cedula de Comission de su Magestad, su fecha en San Ildephonso à 21 de Octubre de 1744 los Autos seguidos por Don Joseph Lorenz de Rada, y otros sus Cohererederos, come here-

JUDGMENT OF THE ROYAL AND SUPREME COUNCIL OF THE INDIES.

Those of the Supreme Council of the Indies in the Hall of Justice considering that by virtue of the royal cedula of commission, dated at San Ildephonso October 21, 1744, the suits prosecuted by Don Josef Lorenz de Rada, and others his coheirs, as heirs *ab intestato* of the Marquis of Torres de Rada, first before the Probate Judge of the City of Mextco, and afterwards

deros, ab intestato del Marqués de las Torres de Rada, primero ante el Juez de bienes de difuntos de la Ciudad de Mexico. y despues en aquella Audiencia; con Doña Gertrudis de la Peña, Marquesa que fuè de las Torres de Rada, viuda de dicho Marquès, y por muerte de esta, con el apoderado del Marquès de Villapuente, su hereder, y por su fallecimiento, con el Defensor nombrado à sus bienes: cuyos Autos se siguieren en su principio, sobre la exhibicion de los Libros, y Papeles del referido Marquès de las Torres de Rada, rescision, y nulidad de los Inventarios, y aprecios hechos por su muerte de sus bienes, manifestacion de ellos, succession en el Titulo de Marquès y en los Oficios de Chancillèr, y Registrador de aquella Audiencia, las de Guadalaxara, Goathemala, Santo Domingo, y Philipinas, y quenta con pago de los rendimientos de estos oficios; y ultimamente sobre la nulidad de la adjudicacion *insolutum*, que de uno, y otro se hizo à dicha Doña Gertrudis de la Peña, y restitucion de sus salarios y emolumentos, con lo demàs, que son los Autos: los quales se mandaron entregar. y presentaron en el Consejo, por Testimonio, y penden en grado de segunda suplicacion, interpuesta por el expressado Don Joseph Lorenz de Rada, de los Autos proveídos por los Ministros de ella en 14 de Noviembre, y 20 de Diciembre de 1742 en que por el primero declararon, no haver probado su accion, y demanda la parte de Don Joseph Lorenz de Rada, y haverlo hecho de sus excepciones, y defensas, la del Defensor de los bienes del Marquès de Villapuente, y en su consequencia mandaron se guardasse, cumpliesse, y executasse el Auto de 5 de Julio de 1721 en que se declarò por

in the Audiencia of that place; with Doña Gertrudis de la Peña, late Marchioness of Torres de Rada, widow of said Marquis, and in consequence of her death, with the Attorney in fact of the Marquis de Villapuente, her heir, and upon his death with the lawyer appointed to defend his estate (*Défenser nombrado á sus bienes*): which suits were prosecuted at first for the production of the books; and papers of the said Marquis of Torres de Rada; the cancellation and annulment of the inventories and appraisements, made after his estate; the exhibition of them; the sucession to the title of Marquis, and the office of Chancellor and Registrar of said Audiencia and those of Guadalajara, Guatemala, Santo Domingo, and the Philippines, and for an account accompanied by payment of the emoluments of these offices; and finally, for the annulment of the adjudication *insolutum*, both of which, and the restitution of the salaries and emoluments, with the rest, were decided in favor of Doña Gertrudis de la Peña which are the decisions (on appeal): which were ordered produced and they were presented before the Council as evidence, and they are pending in the nature of a second appeal taken by the aforesaid Don Joseph Lorenz de Rada from the decrees pronounced by the Judges of it (the Audiencia) on the 14th of November and 20th of December, 1742, in which, by the first, they declared that on the part of Don Joseph Lorenz de Rada he had not proved his suit and demand, and that on the part of the attorney appointed to defend the estate of the Marquis de Villapuente in his pleas and defenses this had been done, and in consequence they ordered that the decree

aquella Audiencia por desierta la suplicacion del de 13 de Febrero de este mismo año, proveído por el Juez General del Juzgado de bienes de difuntos, y que para su execucion se bolviessen los Autos à dicho Juzgado, donde las Partes ocurriessen à pedir lo que les conviniesse; y à mayor abundamiento se impuso perpetuo silencio à dicho Don Joseph de Rada, y sus Colitigantes, y se les condenò en las costas, con otras cosas que por menor se expressan en dicho Auto; y por el segundo de 20 Diciembre de 742. declarò dicha Audiencia por insuplicable el antecedente: cuyos Autos se han substanciado en ausencia, y rebeldìa del Defensor de los bienes del Marquès de Villapuente, en los Estrados de este Sumpremo Consejo, por no haver comparecido à su seguimiento; y vistos por uno de 27 de Noviembre de 1748. teniendo presente lo dicho por el señor Fiscàl en ellos, se declarò haver lugar à el grado de segunda suplicacion, interpuefto por dicho Don Joseph Lorenz de Rada, y que se traxessen estos Autos en lo principal, lo que se executò asi, y en su inteligencia, y de todo lo demàs que és el processo, y vér convino.

FALLAMOS.

Atento à los meritos de èl, à que nos remitimos, que debemos revocar, y revocamos, los Autos proveidos por aquella Audiencia, que quedan citados en 5. de Julio de 721. y 14. de Noviembre de 742. por los que declarò por desierta la suplicacion interpuesta por Don Joseph Lorenz de Rada, y Don Francisco de Revilla, del Auto proveido por el Juez General de bienes de difuntos en 13 de Febrero del referido año de 721. como tambien el de 20. de Diciembre de 742

of the 5th of July, 1721, should be obeyed, complied with and executed, in which it was declared by said Audiencia that the appeal from the one (the decree) of the 13th of February of the same year, pronounced by the Chief Justice of the Probate Court should be dismissed, and that in order that it be executed, the decisions be remanded to the said Court, where the parties might appear to pray (the relief) that they may deem proper; and in addition perpetual silence was imposed on said Joseph de Rada and his colitigants. and they were adjudged to pay costs and other things, which are more specifically set forth in said decrees; and by the second, that of the 20th of December of 742 (1742), said Audiencia adjudged the former proceedings to be nonappealable; which decrees have been enforced in the absence and nonappearance of the lawyer appointed to defend the estate of Marquis de Villapuente, in the Halls of this Supreme Council, because of his not having appeared at the rendering of these decrees; and considering that by a decree of November 27, 1748, interposed by the said Don Joseph Lorenz de Rada, and weighing all that was said by the Attorney General in them (decrees) the right of taking a second appeal was sustained, and it was ordered that the decrees be set forth in the premises, which was done, and in the knowledge of this and all the other facts of the suits, and it seeming just:

WE DECREE.

That mindful of the merits of him to whom we remand this cause, that we ought to revoke, and we

que và expressado: y declaramos por nulos, y de ningun valor, ni efecto, los Inventarios y aprecios de los bienes que quedaron por meurte del Marqués de las Torres de Rada, y la adjudicacion hecha de ellos à la referida Marquesa, y reservamos à los successores de esta, y al referido Don Joseph Lorenz de Rade, y sus colitigantes, su derecho à salvo, para que usen de èl como les convenga, sobre los respectivos derechos deducidos en aquella Audiencia, donde lo deberàn executar. Declarando, como declaramos, que por muerte de Don Francisco Lorenz de Rada, Marquès de las Torres de Rada, se transfiriò en Don Joseph Lorenz de Rada, su sobrino, la possession civil, y natural del Titulo, y Dignidad de Marquès de las Torres de Rada, la que realmente, y con efecto debe verificarse en èl. Y assimismo mandamos se le ponga en la possession de los oficios de Chancillèr, y Registrador de aquella Audiencia, y las demàs que ván citadas, para que las sirva, y possea, en la misma forma, y con las proprias facultados que las gozò, y posseyò, el Marquès su Tio, perciviendo los Frutos de ellas por salario, y manteniendo la propriedad responsable à las resultas del juicio que sigan las partes en aquella Audiencia, por los derechos que les vàn reservados: y en consequensia de todo lo que và dicho, mandamos se chancele, y tenga por de ningun valor, ni efecto la caucion Juratoria, y obligacion otorgada por dicho Don Joseph Lorenz Rada para las resultas de este Juicio; y por esta nuestra sentencia difinitivamente jusgando, assi lo pronunciamos, mandamos, y firmamos. Don Joseph de la Isequilla. Marqués de la Regalia. Don Joseph Cornejo. Don Pedro Domingo de Contreras. Don

do revoke, the decrees rendered by said Audiencia, which have been cited as of the 5th of July, 1721, and 14th of November, 1742, by which the appeal taken by Don Joseph Lorenz de Rada, and Don Francisco de Revilla, from the Decree pronounced by the Chief Justice of the Probate Court on the 13th of February of the said year 1721, as also the one (the appeal) of the 20th of December of 1742, which has been set forth, was dismissed: and we declare null and of no value nor effect the inventories and appraisements of the properties left by the Marquis of Torres de Rada upon his death, and the distribution of them made to the said Marchioness, and we reserve to her successors, and to the said Don Joseph Lorenz de Rada and his colitigants, their right safe and in full force, in order that they may make use of it as they see fit, according to the respective rights deduced in that Audiencia, where they shall execute it. Declaring, as we do declare, that on account of the death of Francisco Lorenz de Rada, the Marquis of Torres de Rada, the civil possession and right of title and rank of the Marquis of Torres de Rada, which really and in effect ought to be confirmed in him, were transferred to Don Joseph Lorenz de Rada, his nephew. And at the same time, we command that he be put in possession of the office of Chancellor and Registrar of that Audiencia and the others before mentioned, in order that he may fill and possess them in the same way, and with the proper authority which the Marquis, his uncle, enjoyed and possessed, enjoying the emoluments of them, as salary, and maintaining the property in accordance with the outcome of the judgment which the

Juan Vazques de Aguero. Dada, y pronunciada fuè la sentencia antecedente por los Señores del Supremo Consejo de las Indias, que la firmaron en Madrid à 16. Abril de 1749. Don Antonio de Salazar y Castillo.

parties may pursue in said Audiencia, by reason of the rights above reserved: and in consequence of all that has been said, we order that the parol (oath taken in lieu of bail) and bond executed by said Don Lorenz de Rada to abide the outcome of this judgment be cancelled and held of no value nor effect; and by this our judgment *definitively* (definitivamente) decreeing, thus we pronounce, command and sign. Don Joseph de la Isequilla. El Marquès de la Regalia. Don Joseph Cornejo. Don Predo Domingo de Contreras. Don Juan Vazquez de Aguero.

The foregoing judgment was given and pronounced by the officers of the Supreme Council of the Indias, who signed it in Madrid, the 16th of April, 1749. Don Antonio de Salazar y Castillo.

EXHIBIT C.

The statistics which follow are taken from a work entitled "Historia de la Colonizacion de la Baja California", by Ulixes Urbano Lassépas, an official of the Mexican Government in Lower California, and printed in 1859 in Mexico City, apparently as a government publication. The work (pp. 91—107) contains a description of the Missions and shows that their population in nearly every case had suffered a great decrease. Where the figures have been given they are reproduced. On page 164 of the History, this Mexican official says that —

> "The greater number of the northern missions lying between Santa Catarina and San Ignacio are to-day (1859) veritable skeletons, some in ruins, scarcely indicating the spot where formerly stood the houses of worship and other buildings. The animals have disappeared from the fields, the native populace has died, silence reigns where formerly was heard the humming of a mill, the bells of the chapels and the lowing of the herds. One of the principal causes of this decadence was without doubt *the application of the pious funds of California to purposes other than those for which they were designed.*

Name of Mission.	Year enumeration was made.	Population.
San Francisco Xavier.	1768	485
	1857	56
Guadalupe or Guasinapi	1768	530
	1857	11
Los Dolores	1768	450
	1857	6
San Ignacio	1778	750
	1857	281
San José del Cabo.	1768	350
	1857	1091
Todos Santos	1768	90
	1857	310
San Luis Gonzaga	1768	310
	1857	20

Name of Mission.	Year enumeration was made.	Population.
Santa Gertrudis	1768	1000
	1857	4
San Borja.	1768	1500
	1857	3
Santa María	1768	330
	1857	0
San Fernando	1770	530
	1857	3
San Pedro Martir	1796	420
	1857	1
Santa Catarina Martir.	1800	1500
	1857	0
Santo Tomás	1797	350
	1855	40
San Vicente Ferrer	1835	176
	1855	40
Rosario	1830	41
	1855	24
Santo Domingo	1778	530
	1855	19
San Miguel	1778	600
	1855	5
Descanso	1778	220
	1855	24
Total of Indians at above-mentioned Missions of Lower California at the earlier dates.		10,162
Total in 1857		1,938
Difference		8,224

EXHIBIT D.

Archivo General de Notarias DEL DISTRITO FEDERAL.

General Archives of Notaries OF THE FEDERAL DISTRICT.

Testimonio de la escritura de venta de fincas de la pertenencia del fondo piadoso de Californias, otorgada por los Señores Ministros de la Tesorería General de la Nación, á favor de los Señores Liquidatarios y demás sócios de la extinguida EMPRESA DEL TABACO.

Certified Copy of the deed of sale of properties which belonged to the Pious Fund of Californias, executed by the Ministers of the General Treasury of the Nation, in favor of the Liquidators and the other Members of the extinct TOBACCO MONOPOLY.

MÉXICO, Agosto 9 de 1902.

MEXICO, August 9th 1902.

EN LA CIUDAD DE MÉXICO, á veinte y nueve de Noviembre de mil ochocientos cuarenta y dos, ante mi el Escribano Público del número y testigos, los Señores Don Tranquilino de la Vega y Don Nícolas María de Fagoaga, Ministros actuales de la Tesorería general de la Nación Dijeron: que por el Ministerio de Hacienda se les han dirijido las dos Supremas órdenes que tengo á la vista y cuyo tenor con el de la respectiva certificación de entero y Decreto de la materia es á la letra como sigue "MINISTERIO DE HACIENDA. Sección segunda Número dos mil setecientos diez y siete. El Ecselentisímo Señor Ministro de Justicia é Instruction pública con fecha de ayer me dice lo que sigue: Ecselentísimo Señor, El Ecselentísimo Señor Presidente provisional de la República mejicana se ha servido espedir el decreto siguiente "Antonio López de Santa

In the City of Mexico, the 29th day of November, 1842, before me, the Notary Public, appeared, with witnesses, the Messrs. Don Tranquilino de la Vega and Don Nicolás María de Fagoaga, present Ministers of the General Treasury of the Nation, and SAID: That through the Department of Finance (Hacienda)there have been issued the two Supreme orders which I have before me, and whose tenor, with that of the respective certificate of receipt and Decree relative to the matter is literally as follows: "Department of Finance (Hacienda) Section second, Number two thousand, seven hundred and seventeen. His Excellency, the Minister of Justice and Public Instructions under date of yesterday, addresses me as follows: Most Excellent Sir: His Excellency, the Provisional President of the Mexican Republic has seen fit to issue the following decree:

Anna, Benemérito de la Patria, General de Division y Presidente provisional de la República mejicana á los habitantes de ella sabed: Que teniendo en consideracion que el Decreto de ocho de Febrero del presente año, que dispuso volviera á continuar al cargo del Sepremo Gobierno el cuidado y Administración del fondo piadoso de Californias, como lo había estado anteriormente, se dirije á que se logren con toda esactitud lo benéficios y nacionales objetos que se propuso la fundadora, sin la menor pérdida de los bienes destinados al intento: y considerando asímismo, que esto solo puede conseguirse, capitalizando los propios bienes, é imponiéndolos á créditos bajo las debidas seguridades, para evitar así los gastos de Administracion y cualquiera otros que puedan sobrevenir; usando de las facultades que me concede la séptima de las bases acordadas en Tacubaya y sancionadas por la nacion, he tenido á bien decretar lo siguiente PRIMERO. Las Finca rústicas y urbanas, los créditos, y demás bienes pertenecientes al fondo piadoso de Californias, quedan incorporados al Erario nacional SEGUNDO. Se procederá por el Ministerio de Hacienda á la venta de las fincas y demás bienes pertenecientes al fondo piadoso de Californias, por el capital que representen al seis por ciento de sus productos anuales, y la Hacienda pública reconocerá el rédito del mismo seis por ciento, el total producido de estas enagenaciones. TERCERO. La renta del Tabaco queda hipotecada especialmente, al pago de los réditos correspondientes del capital del referido fondo de Californias, y la Direccion del ramo entregará las cantidades necesarias para cumplir los objetos á que está

Antonio Lopez de Santa Anna, Well deserving of the Country, General of Division and Provisional President of the Mexican Republic to the inhabitants of the same, be it known: THAT WHEREAS, the decree of February 8th of the present year, directing that the administration and care of the Pious Fund of the Californias should redevolve on and continue in charge of the Government, as had previously been the case, was intended to fulfill most faithfully the beneficent and national objects designed by the founders, without the slightest diminution of the properties destined to the end; and whereas, this result can only be attained by capitalizing the funds and placing them at interest on proper securities so as to avoid the expenses of administration and the like, which may occur. In virtue of the power conferred on me by the Seventh Article of the Bases of Tacubaya, and sanctioned by the Nation, I have determined to decree as follows:

1. The real estate, urban and rural, the credits, and all other property belonging to the Pious Fund of the Californias are incorporated into the National Treasury.

2. The Department of the Treasury will proceed to sell the real estate and other property belonging to the Pious Fund of the Californias for the capital represented by their annual product at six per cent. per annum. And the public treasury will acknowledge an indebtednees of six per cent. per annum on the total proceeds of the sales.

3. The revenue from tobacco is specially pledged for the payment of the income corresponding to the capital of the said fund of the Californias, and department in charge

destinado el mismo fondo, sin deducción alguna por gastos de Administration ni otro alguno. POR TANTO mando se imprima, publique circule y se le dé el debido cumplimiento. Palacio del Gobierno nacional en Méjico á veinte y cuatro de Octubre de mil ochocientos cuarenta y dos. *Antonio Lopéz de Santa Anna. Pedro Véloz*, Ministro de Justicia é Instruccion pública." Y lo comunico á Vuesencia, para su inteligencia y efectos correspondientes." TRASLÁDOLO á Usías, de Suprema orden con iguales fines. Dios y Libertad. Méjico, Octubre veinte y cinco de mil ochocientos cuarenta y dos. *Trigueros.* Señores encargados de la Tesorería general." Al márgen: Supmasorden." "MINISTERIO DE HACIENDA. *Seccion. Número dos mil setecientos once. T. Número cuatro mil novecientos diez y seis.* Los liquidatarios y demás socios de la estinguida empresa del Tabaco, han hecho la siguiente proposicion. 1a. COMPRAREMOS al Supremo Gobierno, la Hacienda conocida con el nombre de AMOLES con sus anexas, y las tres cuartas partes que le pertenecen en la de Ciénega del Pastor y sus anecsas, ubicadas, la primera en el Departamento de San Luis Potosí, y la segunda en el de Guadalajara; pertenecientes ambas al fondo piadoso de Californias; y cuyo valor se calculará por lo que produsca sus actuales arrendamientos, á razon de un seis por ciento al año: es decir, que si estos producen anualmente veinte y cuatro mil pesos, el precio de estas dos fincas será de cuatrocientos mil pesos; y en la misma proporción si el arrendamiento es mayor ó menor. DAREMOS EN PAGO, CINCUENTA MIL PESOS que se enterarán inmediatamente en la Tesorería general — DOSCIENTOS CINCUENTA MIL PESOS que por resultado

thereof, will pay over the sums necessary to carry on the objects to which said fund is destined without any deduction for costs whether of administration or otherwise.

THEREFORE, I order that it be printed, published and circulated and properly executed. Palace of the National Government of Mexico, October 24, 1842—Antonio Lopez de Santa Anna—Pedro Velez, Minister of Justice and Public Instruction — "And I communicate it to Your Honor for your knowledge and appropriate action." I transfer it to Your Honors by Supreme order for the same purposes — God and Liberty. Mexico, October 25, 1842. Trigueros. — Gentlemen in Charge of the General Treasury — In the margin: "Supreme Order" — Department of Finance (Hacienda). — Section — Number two thousand seven hundred and eleven. T. Number four thousand nine hundred and sixteen. The liquidators and the other members of the extinct Tobacco Monopoly have made the following proposal: 1st. We will buy from the Supreme Government the Estate known by the name of "Amoles," with its outlying properties (anexas) and three-fourths of the Ciénega del Pastor and its outlying properties (anexas), which also belong to it; the first situated in the District of San Luis Potosí. and the second in that of Guadalajara; both belonging to the Pious Fund of Californias; the value of which shall be determined by the capital, which at the rate of 6% per annum would produce their present rents: that is to say, that if these yield annually twenty-four thousand dollars, the price of these two estates shall be four hundred thousand dollars; and in the same proportion if the income from rents

de nuestra cuenta con el Banco nos deben ser pagados en abonos de treinta y cinco mil pesos mensuales con los productos de las rentas de Tabacos de las Administraciones de Zacatecas y Guadalajara, tan luego como se amortizen las órdenes anteriores, que se nos están pagando en la actualidad por las mismas Administraciones con arreglo al Decreto Supremo de doce de Noviembre de mil ochocientos cuarenta y uno. 2a. SEGUNDA. LO QUE FALTARE hasta completar el total valor de dichas haciendas LO ENTREGAREMOS en la Tesorería general en créditos reconocidos por la nacion; verificándolo en el término de ocho meses, que se contarán desde la fecha de la aprobación de esta propuesta. 3a. TERCERA. EL SUPREMO GOBIERNO saneará en todo caso la venta de dichas fincas; cualquiera reclamacion que pueda hacerse contra las mismas, será de cuenta del Gobierno satisfacerlas, sin que por ningun motivo se nos inquiete en la pacífica poseción de ellas, y cualquiera gasto ó perjuicio que se nos pueda orijinar por este motivo, nos deberá ser indemnizado por la Hacienda pública. 4a. CUARTA. NO ESTAREMOS OBLIGADOS á ecsivir ninguna otra cantidad que las yá espresadas, por razón de esta compra. 5a. QUINTA. NOS OBLIGAMOS á cumplir las Escrituras de arrendamiento de dichas Haciendas hasta su término, si en ellas se espresare que los arrendatarios no deban ser molestados ni aun en el caso de enagenacion de las mencionades fincas." Y en virtud de la autorizacion que concede al Gobierno el decreto de esta fecha, admite el Ecselentísimo Señor Presidente provisional esta proposicion, bajo el concepto de que los cincuenta mil pesos que se ofrecen entregar en numerario se ecsivirán

be greater or less. We will give in payment fifty thousand dollars, to be deposited immediately in the General Treasury — Two Hundred and Fifty thousand, which as a result of our account with the Bank (Banco) ought to be paid us in monthly instalments of $35.000, together with the proceeds of the revenues of tobacco from the districts of Zacatecas and Guadalajara as soon as the above orders shall fall due, which are being paid at present by said Districts in accordance with the supreme order of the 12th of November, 1841. 2nd. The amount lacking to complete the total value of the said estates we will pay into the General Treasury in notes approved by the Nation; redeeming the same in the period of eight months, which will be counted from the approval of this offer. 3rd. The Supreme Government shall guarantee in every case the sale of said estates; it shall be the obligation of the Government to satisfy any claims whatsoever that may be brought against the estates, so that we may not for any cause be disturbed in the peaceful possession of them, and any expense or loss which may originate through this cause must be made good by the Public Treasury (Hacienda.) 4th. We will not be held liable for any other amount than those already stated by reason of this purchase. 5th. We bind ourselves to carry out the contracts of the leases of said estates until their expiration, if therein it be provided that the tenants must not be disturbed even in case of the sale of the said estates."

And in virtue of the authority conceded to the Government by the decree of this date, His Excellency, the Provisional President, accepts

en el acto. Dios y Libertad. Méjico Octubre veinte y cinco de mil ochocientos cuarenta y dos. *Triguéros.* Señores encargados de la Tesorería general." Al márgen: "Otra." "MINISTERIO DE HACIENDA. *Seccion segunda Número dos mil ochocientos tres. T. número cinco mil trescientos cuarenta y seis.* DADA CUENTA al Ecselentísimo Señor Presidente sustituto con el oficio de Usías. número doscientos uno de diez y siete del que rige, en que consultan si al venderse las Haciendas de Ciénega del Pastor y San Agustin de los Amoles pertenecientes al fondo piadoso de Californias se tubo presente el valor de los llenos, ecsistencias, deudas y mejoras; se ha servido acordar su Escelencia diga á Usías. en contestacion, como lo verifico, que teniendo en consideracion el Supremo Gobierno que se computaron les llenos de las Haciendas referidas para apreciar sus arrendamientos á los que se acomodó el precio ó valor contenido en el contrato celebrado con los liquidatarios y demás socios de la estinguida empresa del tabaco para la venta de las fincas esprasadas cuya aprobacion comuniqué á Usías. bajo el número dos mil setecientos once en veinte y cinco del último Octubre, no se insiste en que sean pagados por separado. En consecuencia dispone su Escelencia se admita la propuesta que han hecho los interesados vervalmente, reducida á ecsivir tres mil pesos en el acto, y con calidad de que si los llenos aparecieren pertenecer á tercera persona, será de cuenta de los mismos su devolucion ó contenta, sin que esta incluya responsabilidad alguna que tenga que cubrir el Gobierno. De suprema orden lo comunico á Usías. para su inteligencia y que desde luego se pro-

this offer upon the condition that the $50,000 which is offered to be paid in coin be delivered immediately. God and Liberty. Mexico. October 24, 1842. Trigueros. Gentlemen in charge of the General Treasury. In the margin — "Another," "Department of Finance" (Hacienda), "Section Second, Number two thousand eight hundred and three. T. Number five thousand, three hundred and forty-six. His Excellency, the Provisional President, having been notified by the letter of Your Excellencies, No. 201 of 17 instant, in which you discuss as to whether or not account was taken of the utensils (llenos) stock, debts and improvements of the hacienda Ciénega del Pastor and San Agustin de los Amoles belonging to the Pious Fund of Californias at the time of their sale. His Excellency has seen fit to say in reply to your Honors, to which I attest, that inasmuch as the Supreme Government took into consideration the farming utensils (llenos) on the said estates in order to determine their rents, by means of which the price or value contained in the contract made with the liquidators of the extinct Tobacco Monopoly for the sale of the aforesaid estates was computed, the approval of which contract, I communicated to your Honorsrunder Number 2711 on the 25th of October last, it is not required that the utensils be paid for separately. Therefore his Excellency orders the acceptance of the proposal made verbally by the parties interested, provided three thousand dollars be paid down, and with the understanding that should the utensils (llenos) thereon belong to a third party, it will be the duty of the purchasers to restore the same or give satisfaction. relieving the Government from all

ceda á otorgar la correspondiente Escritura de enagenación. Dios y Libertad. Méjico Noviembre veinte y tres de mil ochocientos cuarenta y dos. *Trigueros.* Señores encargados de la Tesorería general. CERTIFICACION DE ENTERO. "LOS MINISTROS. Tesoreros generales de la Nación. CERTIFICAMOS que hoy á fojas quinientas veinte y nueve vuelta del Libro manuel de cargo, nos formamos el siguiente. Son cargo: TRESCIENTOS TRES MIL PESOS que con el valor de las Pólizas números mil ochocientos cuatro y mil ochocientos cinco y TRES MIL en numerario, enteran los liquidatarios y demas socios de la extinguida Empresa del Tabaco, y con *ciento veinte y cinco mil quinientos* que han de enterar en veinte y cinco de Junio del año procsimo de mil ochocientos cuarenta y tres, en créditos reconocidos por la Nacion componen el total de CUATROCIENTOS VEINTE Y OCHO MIL QUINIENTOS PESOS, en que han comprado las haciendas del Custodio (à) San Agustin de los Amoles y sus anecsas en el Departamento de San Luis Potosí, y la de Ciénega del Pastor y sus anecsas en el de Jalisco, pertenecientes al fondo piadoso de Californias, calculado el valor de la primera sobre DOCE MIL SETECIENTOS CINCO PESOS que produce de arrendamiento á razon de un seis por ciento anual, y de DOCE MIL OCHOCIENTOS VEINTE Y CINCO PESOS tres cuartas partes sobre DIEZ Y SIETE MIL CIEN PESOS que produce tambien de arrendamiento la segunda; todo conforme á aprobacion suprema del Gobierno fecha veinte y cinco del mes prócsimo pasado y á resolucion superior que orijinales se adjuntan á este billete, en el concepto de que el entero de la parte de créditos, queda afianzada á nuestra satifaccion. Billete mil

responsibility. By Supreme order, I communicate the same to your honors for your information and that you may forthwith proceed to execute the corresponding deed of sale. God and Liberty. Mexico, November 23, 1842. Trigueros. Gentlemen in Charge of the General Treasury. Certificate of receipt (Entero). The Ministers, Treasurers General of the Nation -- We certify that to-day on pages 529 and over in the Book of Accounts, we have entered the following: There has been entered to the account of the liquidators and the other members of the extinct Tobacco Monopoly $303,000, deposited in notes nos. 1804 and 1805, and $3,000 in cash, which with the $125,500 which they are obliged to pay on the 25th of June of next year, 1843, in notes approved by the Nation forms the total amount of $428,500 for which sum has been purchased the estates Custodio, San Agustin de los Amoles and their outlying properties (anexas) in the District of San Luis Potosí, that of Ciénega del Pastor and its outlying properties (anexas) in the District of Jalisco, belonging to the Pious Fund of Californias; the value of the first calculated at $12,705, which it produced from rents at the rate of 6 % per annum, and the second at $12,825, being three-fourths of $17,100, which is also produced from rents; all in accordance with the approval of the Supreme Government, dated 25th of last month and a superior resolution, the originals of which are attached to this letter, with the understanding that the entire amount in the form of notes be secured to our satisfaction. Letter 1884— $303,000 Vega —Fagoaga—Manuel Fernandez, Liquidator of the

ochocientos ochenta y cuatro. TRESCIENTOS TRES MIL PESOS. *Vega. Fagoaga. Manuel Fernández*, Liquidatario de la E. del Tabaco. Y PARA QUE CONSTE damos la presente en Méjico á veinte y seis de Noviembre de mil ochocientos cuarenta y dos. *Tranquilino de la Vega. Nicolás María de Fagoaga.* QUE SUPUESTO lo referido y procediendo al otorgamiento de la corresponidente Escritura, por la presente y en aquella vía y forma que mas haya lugar en derecho firme y valedera sea, los espresados Señores Ministros OTORGAN: Que en cumplimiento de las Supremas ordenes referidas, venden en venta real de hoy para siempre y dán en adjudicacion y pago á los Señores Liquidatarios y demas socios de la estinguida Empresa del Tabaco las tres cuartas partes que el Supremo Gobierno tiene en la Hacienda de Ciénega del Pastor y sus anecsas con cuanto á ellas correspenda, y la Hacienda de San Agustin de los Amoles con sus anecsas de San José la Vaya, San Ygnacio del Buey, Custodio, Buena vista, y todas las otras tierras y rancherías que constan de los respectivos documentos y se han considerado y consideran como pertenecientes á dicha finca, exepto la de San Pedro de Ybarra, que con anterioridad está enagenada por el Supremo Gobierno; cuyas fincas se hayan ubicadas en los Departementos de Guadalajara, San Luis Potosí, Tamaulipas ó algun otro que no se tiene presente, y fueron de la pertenencia del fondo piadoso de Californias, de las cuales dispone el Supremo Gobierno con arreglo á lo prevenido en el Decreto incerto, que con respecto á dicho fondo espidió por el Ministerio de Justicia en veinte y cuatro del prócsima pasado Octubre y á otras varias antiguas disposiciones, cuya extinct Tobacco Monopoly. And in witness whereof, we execute the present instrument in Mexico, the 26 of November, 1842—Tranquilino de la Vega. Nicolás María de Fagoaga." That admitting the foregoing and proceeding to the execution of the corresponding deed, now and in that manner and form which may be most binding and valid in law, the said Gentlemen Ministers covenant: That in fulfillment of said Supreme orders, they will sell in fee simple (venta real) from now and forever and give in settlement and payment to the liquidators and the other members of the extinct Tobacco Monopoly the three-fourths part which the Supreme Government owns in the estate Ciénega del Pastor and its outlying properties (anexas) and whatever belongs thereto, and the Estate San Agustin de los Amoles, with its outlying properties (anexas) of San José Lavaya, San Ignacio del Buey, Custodio, Buena Vista, and of the other lands and ranches which appear in the respective documents and which have been considered and are considered as pertaining to said property, except that of San Pedro de Ibarra which has already been sold by the Supreme Government; which proporties are situated in the Districts of Guadalajara, San Luis Potosí, Tamaulipas or in any other not named, and which properties belonged to the Pious Fund of California, of which the Supreme Government disposes in accordance with its rights set forth in the Decree hereto annexed, and which with reference to said fund was issued by the Departurent of Justice the 24th of October last, and in accordance with various former orders, which sale the said Ministers make of all that by right and law be-

venta hacen los referidos Señores Ministros con cuanto de hecho y de derecho toca y perte' ece á dichas fiincas inclusos los llenos de muebles, semovientes y aperos, con los linderos que guardan, sus entradas, salidas, usos, servidumbres, trojes, casas y aguas, del mismo modo que hasta aquí se han poseido por el referido fondo piadoso, libres de todo gravámen, censo é hipoteca, en precio y cuantía de CUATROCIENTOS VEINTE Y OCHO MIL QUINIENTOS PESOS que es su legítimo valor, regulado por los actuales arrendamientos, incluyéndose el valor de los llenos en los términos y del modo que espresa la segunda de las Supremas órdenes incertas, y caso que mas valgan, hacen donation pura, perfecta é irrevocable que el derecho llama *intervivos*, sin que ahora ni nunca pueda demandárseles otra suma á los compradores por razon de este contrato, debiéndose, además entregárseles á estos todos los títulos, papeles y documentos que hagan relation con dichas fincas, y pudiendo tomar posesión de ellas desde luego, judicial ó estrajudicialmente segun les convenga con solo la copia de esta Escritura y como reales vendedores se obligan á la evicción y saneamiento de este contrato, en tales términos que siempre será firme y subsistente sin que nadie pueda alegar mejor derecho, y si se anulare ó saliere tercero que sobre estas fincas ó parte de ellas alegare derecho ó pusiere pleito, lo tomará de su cuenta la Hacienda pública tan luego come se le avise aunque sea despues de la publicacion de provanzas, y lo seguirá por todas sus instancias hasta dejar á los Señores compradores en quieta y pacífica posecion, lo que si no pudiere conseguir los indemnizará del precio de esta venta con todas las mejoras

longs and pertains to said properties, including the farming implements, [llenos] furniture, stock and sheep, with the fences which enclose them, the rights of way enjoyed, or to which they are subject, uses, servitudes, granaries, buildings, and waters in the same manner as they have been possessed heretofore by the said Pious Fund, free from all encumbrance,annuity and mortgage, for the sum of $428,500, which is their true value, estimated by the present rents, including the value of the farming utensils [llenos] under the terms and in the manner expressed by the second of the Supreme orders herein incorporated; and in case they are worth more, they make entire, perfect and irrevocable donation, which in law is called *intervivos*, so that neither now nor ever can any other sum be demanded from the grantees by reason of this contract, binding themselves, moreover, to deliver to the latter all the titles, papers and documents which may relate to said properties; and granting immediate possession of them, judicially or extrajudicially, according as may please them (con solo) by a copy of this Deed alone; and as actual sellers they bind themselves to the security and guaranty of this contract on such terms as will always be binding and lasting to the exclusion of all prior rights, and if the sale should be annulled, or a third party should appear to allege title or to bring suit concerning these properties, the Public Treasury as soon as it is advised of it, even though it be after the taking of testimony, undertakes to prosecute the same through all its stages until the grantees be left in quiet and undisturbed possession, or if this can not be accomplished in full per-

que hubieren hecho, gastos erogados, y daños y perjuicios que se les sigan con total arreglo á lo pactado en las condiciones tercera y cuarta en la primera de las Supremas órdenes incertas. Y habiendo cumplido yá los compradores adjudicatarios con las esbibiciones á que se comprometieron segun consta de de la Certificacion incerta; y no teniendo lugar la cláusula quinta en razon de no estar obligado el Supremo Gobierno á mantener á los arrandatarios en sus contratos, verificada la venta; quedan los espresados compradores adjudicatarios en la libre, franca, y general administracion de las espresadas fincas para que puedan disponer de ellas como les convenga por sí ó por quien sus derechos represente, como de cosa suya propia, legítimamente adquirida; entendiéndose que este contrato debe comenzar á tener sus efectos desde el dia veinte y cinco del pasado Octubre, que es la fecha de su aprobacion, segun la primera de las incertas órdenes; y que por consiguiente desde aquella fecha deberán percibir los compradores los productos y arrendamiento de las repetidas fincas. Y á LA GUARDA FIRMEZA Y CUMPLIMIENTO de esta Escritura, obligan los Señores otorgantes los haberes de la Hacienda pública y los someten á los Tribunales y Jueces competentes para que à lo dicho la compelan y apremien como si fuese por sentencia consentida y pasada en autoridad de cosa juzgada, con la renuncia de Leyes favorables en derecho necesaria. Y estando presentes los Señores Don Francisco de Paula Rubio y Don Manuel Fernández y habiendo entendido el tenor de esta Escritura, dijeron: Que como socios liquidatarios y en representacion de los Señores Rubio hermano, Don Joaquin María Errazu, Don Felipe

formance of that which is agreed in the third and fourth conditions of the first of the Supreme orders here incorporated, it (the Public Treasury) will return to them the price of this sale, and of all the improvements which they have made, costs of suit, damages and losses which may be incurred by them. And the grantees having made the deposits to which they agreed as is shown by the Certificate hereto annexed and the 5th clause having no force, because the Supreme Government is not obliged to protect the tenants in their contracts in the event of a sale, the said grantees are placed in full, free and entire possession to manage the said properties, so that they may dispose of them as they please for themselves or for those whose rights they represent, as of their own private property legitimately acquired; it being understood that this contract is to take effect from the 25th of October last, the date of its approval, according to the first of the orders herein incorporated and that consequently from that date the grantees should receive the proceeds and rents from the said properties. And for the perfect performance and fulfillment of this deed, the grantors pledge the assets of the Public Treasury and submit them to the tribunals and competent judges, so that at the proper time they may uphold and enforce it as though by a judicial sentence pronounced with the force of *res judicata*, with the renunciation of favorable statutes deemed necessary in law. And being present, the Messrs. Don Francis de Paula Rubio and Don Manuel Fernandez, and having understood the meaning of this Deed, said: That as associated liquidators and as representatives of the

Neri del Barrio, Don Manuel Escandon, Don Benito de Maqua y Muriel hermanos, que son los que componen la estinguida empresa del Tabaco, y á quienes se ha hecho esta adjudicacion y venta, aceptaban y aceptan en los términos en ella contenidos, y firmaron con los Señores Ministros siendo testigos Don Manuel Bracho Don Felipe Diaz y Don Francisco Gonzales de esta vecindad de que doy fé. — *Tranquilino de la Vega. Nicolas Ma. de Fagoaga. Franco. de P. Rubio. Liqo. de la E. de T. M. Fernandez. Liqo. de la E. de Tavo. Ramon Villalobos. Esno. Pubco. Rúbricas.*

Un sello qui dice: "SECRETARÍA DE RELACIONES EXTERIORES. MÉXICO". Sección de América, Asia y Oceania Número 169. Mexico, Agosto 5 de 1902. El Señor Embajador de los Estados Unidos me dice en nota fechada ayer lo que, traducido, sigue: "El Departamento de Estado me ha informado que, el 21 de Julio próximo pasado, el Gobierno de los Estados Unidos notificó su deseo al Señor Godoy, Encargado de Negocios *ad interim* de México, para que ciertos documentos fuesen presentados, á fin de hacer prueba ante la Corte de Arbitraje, constituida para considerar la cuestión de los fondos piadosos. Entre ellos está la escritura de venta de tres cuartas partes de la hacienda "Ciénaga del Pastor" y sus anexas, y de la hacienda de San Agustin, de San José, Lavaya, San Ygnacio del Buey, Custodio, Buena Vista etc., por los Secretarios de Hacienda de México, por $428,500; la cual escritura, creése, fué tirada en 29 de Noviembre de 1842, ante el Notario Villalobos, y que actualmente se halla bajo la Custodia del Notario Don Gil Mariano León, de la Ciudad de México. Se desea

Messrs. Rubio brothers, Don . quin Maria Errazu, Don Felipe I de Barrio, Don Manuel Escanc Don Benito de Magua and Mu Brothers, who are those who c stitute the extinct Tobacco Mo poly, and to whom this conveya and sale has been made, they cepted and do accept in the ter therein contained and signed w the Ministers, the witnesses ther being Don Manuel Bracho, D Felipe Diaz and Don Franci: Gonzalez of this neighborhood, which I attest. Tranquilino de Vega. Nicolas Ma. de Fagoag Franco. de P. Rubio, Liquidator the Tobacco Monopoly. M. Fe nandez, Liquidator of the Tobac Monopoly. Ramon Villalobos-N tary Public, Rubrics. A seal whi says: "Department of Foreign R lations-Mexico." Section of Am rica, Asia and Oceanica Numb 169. Mexico, August 5, 190 The Ambassador of the Unite States informs me in a note, date yesterday, which translated, rea as follows: "The Department c State has informed me that on th 21st of July last, the Governmen of the United States expressed it desire to Senor Godoy, Charg d'Affaires, *ad interim* of Mexico that certain documents should b presented as evidence before the Court of Arbitration formed t consider the question of the Pious Funds. Among these is the deed of sale of 3/4 parts of the Estate 'Ciénega del Pastor' and its outlying properties (anexas) and of the estate San Agustin de San José, Lavaya, San Ignacio del Buey, Custodio, Buena Vista, etc. by the Secretaries of the Treasury of Mexico for $428,500, which deed it is believed was executed on the 29th of November, 1842, before the Notary Villalobos, and

con interés, que una copia del citado documento se ha suministrada tan pronto como fuese posible, ó cuando menos, que mi Gobierno sepa que tal documento será suministrado por el Gobierno de México. Tengo instrucciones para preguntar desde luego, si el Gobierno Mexicano ha hecho sacar copia del referido documento, y en qué tiempo pueda esperar mi Gobierno que le sea remitida al Agente de los Estados Unidos, según está prevenido en el articulo IV del Protocolo. — "Solicito respectuosamente de Vuestra Excelencia que me envíe, con la prontitud que las emergencias del caso lo requieren, el informe deseado." Lo que traslado á Usted á fin de que se sirva expedir. á la brevedad posible, la copia de la escritura á que se refiere la preinserta nota, en el concepto de que debe ser copia fehaciente y sin timbres, por tratarse del asunto que la propia nota especifica. Renuevo á Usted mi consideración. *Mariscal.* Rúbrica. Señor Director del Archivo general de Notarias. Presente.

ES TERCER TESTIMONIO compulsado de su matríz, la que está autorizada por el Notario RAMÓN VILLALABOS en el protocolo que formó, el cual obra en el Archivo de mi cargo. Y en uso de la facultad que me concede la ley de diez y nueve de Diciembre de mil novecientos uno, en su artículo noventa y seis, fracción catorce, expido el presente á solicitud y para el SUPREMO GOBIERNO DE LA UNIÓN, en virtud de lo mandado en el oficio preinserto. Está cotejado y vá en seis fojas, y SIN TIMBRES por tratarse de asunto en que se interesa el FISCO FEDERAL. Mexico, Agosto nueve de mil novecientos dos. Entre líneas — circule — una palabra — Vale.

which today is to be found in the custody of the Notary Don Gil Mariano León of the City of Mexico It is specially desired that a copy of the said document be furnished as soon as possible or at least, that my government may know that said document will be furnished by the Government of Mexico. I am. therefore, instructed to inquire if the Mexican Government has had the said document copied, and when my Government may expect it to be forwarded to the Agent of the United States, as provided in Article IV of the Protocol. "I respectfully request of Your Excellency that the desired information be sent to me with the promptness which the emergency of the case requires." All of which I hand to you that you may send as soon as possible, the copy of the deed to which the above inserted note refers, with the understanding that the copy must be authentic and without stamps, to be used for the purpose certified in said note. I renew to your honor my consideration. Mariscal. Rubric. Señor Director of the General Archives of Notaries. Present.

This is the third copy taken from its original, which is subscribed by the Notary Ramon Villalobos in the protocol he made, which is filed in the Archives in my charge. And availing myself of the rights conceded me by the law of December 19, 1901, in its Article 96, part 14, I issue the present copy at the request and for the Supreme Government of the Union, in virtue of the order in the official letter previously inserted. Compared and issued in 6 leaves and *without stamps* on account of dealing with a subject in which the Federal Treasury is interested. Mexico.

Sello E. Escudero.
(Archivo General de
Notarias
del Distrito Federal.
Mexico.)

Derechos devengados

Siete pesos.

(Sin derechos)

No. 494. El infrascrito, Subsecretario de Relaciones Exteriores, Certifica; que el Sr. Lic. Don Eduardo Escudero es Director del Archivo general de Notarías del Distrito Federal y suya la firma que antecede.

México, doce de Agosto de mil novecientos dos.

Sello Jose Algara.
(Secretaría de Relaciones
Exteriores. México.)

Embassy of the United States of America.

Mexico, August 13, 1902.

I, Powell Clayton, Ambassador Extraordinary and Plenipotentiary of the United States of America at Mexico, hereby certify that José Algara, whose signature is here to attached, was, at the time he signed the same, Sub-Secretary of the Department of Foreign Affairs at Mexico, and that said signature is his true and genuine signature.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Embassy of the United States at Mexico, the day and year next above written, and of the independence of the United States the one hundred and twenty-seventh.

POWELL CLAYTON.

Seal (Embassy of the United States of America, City of Mexico).

August 9, 1902. Inserted between the lines. Circulate-one word-Authentic.

SEAL.
General Archives of Notaries of the Federal Districts, Mexico.
E. ESCUDERO.
Fees are $7.00.
(Rubric)
(Without Charge).

No. 24. The undersigned, Assistant Secretary of Foreign Relations, certifies: that the Sr. Lic. Don Eduardo Escudero is the Director of the General Archives of the Federal District, and the above signature is his.

Mexico, August 12, 1902.

(Seal of Department of Foreign Affairs.)

JOSÉ ALGARA.

FP GUG AAc
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